UNITED STATES PATENT AND TRADEMARK OFFICE

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PAPER NO. 39

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP
100 GALLERIA PARKWAY, NW
STE 1750
ATLANTA, GA 30339-5948

COPY MAILED

AUG 1 1 2003

OFFICE OF PETITIONS

In re Application of
Scott C. Holt, et al.
Application No. 08/876,839
Filed: June 16, 1997
Attorney Docket No.192600780

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed by facsimile transmission on August 8, 2003, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination).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

Petitioner is advised that the issue fee paid on May 5, 2003, using a Certificate of Mailing under 37 CFR 1.8 dated April 22, 2003, 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]

After the application is received in the Office of Petition, the file will be forwarded to Technology Center AU 2642 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examine
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy
(703) 305-9220

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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JJGJR.: 02-06

Paper No: __

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100 GALLERIA PARKWAY
SUITE 1750
ATLANTA GA 30339

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FEB 13 2006

OFFICE OF PETITIONS

In re Application of :
Holt, et al. :
Application No. 08/876,839 : DECISION
Filed: 16 June, 1997 :
Attorney Docket No. 192600780 :

This is a decision on the petition filed on 3 January, 2006, under 37 C.F.R. §1.47(a).

For the reasons set forth below, the petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

NOTES:

(1) Any reply must include a renewed petition (and fee) must include a petition under 37 C.F.R. §1.47 and 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 "Petition under 37 C.F.R. §1.47";

(2) Thereafter, there will be no further reconsideration of this matter.

BACKGROUND

The record indicates:

- the instant application was filed on 16 June, 1997;

- through a series of amendments, incorporating priority claims, Petitioner avers that he seeks to amend claims to include subject matter to which Evan Krause (Mr. Krause) contributed (and so also alter the inventive entity pursuant to 37 C.F.R. §1.48);

- on 3 January, 2006, Petitioner Jeff Kuester (Reg. No. 34,367) filed, *inter alia*, the instant petition, an oath/declaration, which, notably, is not signed by any of the averred "signing" co-inventors–Scott Crandall Holt, Christopher Bertran Medders, Drina C. Yue, Raymond J. Smets, Thomas Joesph Moquin, Terry Durand and Lawrence R. Berke–as required by statute and regulation, or by the alleged non-signing inventor Mr. Krause;

- moreover, while Petitioner alleges that the entire application (description, claims, abstract and drawings) was transmitted to Mr. Krause, the transmittal letter provided clearly evidences that only the oath/declaration and the assignment were sent to Mr. Krause, and there is no documentation supporting a contention that he received an Email transmission and was able to download/read the attachments thereto.

ANALYSIS

The regulations at 37 C.F.R. §1.47 provide in pertinent part:

> **§ 1.47 Filing when an inventor refuses to sign or cannot be reached.**
> (a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.
>
> * * *

The regulations at 37 C.F.R. §1.63 provide in pertinent part:

> **§1.63 Oath or declaration.**
>
> (b) In addition to meeting the requirements of paragraph (a)of this section, the oath or declaration must also:
>
> (1)Identify the application to which it is directed;

> (2) State that the person making the oath or declaration has reviewed and understands the contents of the application, Including the claims, as amended by any amendment specifically referred to in the oath or declaration; and
>
> (3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

When one alleges a refusal of the inventor to sign the application papers, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who, *inter alia*, presented the inventor with the application papers and/or to whom the refusal was made.

The commentary at MPEP §409.03(d) provides:

> **409.03(d) Proof of Unavailability or Refusal**
>
> INVENTOR CANNOT BE REACHED
>
> Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 C.F.R. §1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.
>
> The fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 C.F.R. §1.47.
>
> Furthermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 C.F.R. §1.47. 37 C.F.R. §1.43 may be available under these circumstances. See MPEP §409.02. Such a petition under 37 C.F.R. §1.47 will be dismissed as inappropriate.
>
> The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that

the statement contain facts as opposed to conclusions.

REFUSAL TO JOIN

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 C.F.R. §1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP §106. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 C.F.R. §1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 C.F.R. §1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should

> be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Thus, not only must a copy of the entire application must be sent to the last known address of the non-signing inventor (or the estate representative) with a request that he/she sign the declaration for the patent application–and evidence of that transmittal submitted–but also a reasonable effort must be made to ascertain a current or last known address, and the petition (with fee) must state over the signature and registration number of the Petitioner the last known address and, if appropriate, evidence of the due diligence effort ascertaining same.

Alternatively, an oath or declaration for the patent application in compliance with 37 C.F.R. §§1.63 and 1.64 must be presented.

(The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.[1])

CONCLUSION

The record as it stands is deficient as to document support for the averment of transmittal of the entire application (description, claims, abstract and drawings) to the non-signing inventor at current/valid (or at least last-known/ascertainable) addresses. The evidence of these requirements should be submitted with any renewed petition. Moreover, the requirement for the filing of an oath/declaration executed by the "signing" inventors does not appear to have been satisfied.

Therefore, the instant petition hereby is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:[2]

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[1] See: MPEP 409.03(b).

[2] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number are not longer routed to the new number , and (571) 273-8300 is the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

By mail: Commissioner for Patents[3]
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

[3] 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

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JJGJR.: 02-07

Paper No: __

THOMAS, KAYDEN,
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SUITE 1750
ATLANTA GA 30339

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MAR 0 1 2007

OFFICE OF PETITIONS

In re Application of :
Holt, et al. :
Application No. 08/876,839 : DECISION
Filed: 16 June, 1997 :
Attorney Docket No. 192600780 :

This is a decision on the renewed petition filed on 17 July, 2006, under 37 C.F.R. §1.47(a).

For the reasons set forth below, the petition under 37 C.F.R. §1.47(a) is **GRANTED**.

BACKGROUND

The record indicates:

- the instant application was filed on 16 June, 1997;
- through a series of amendments, incorporating priority claims, Petitioner avers that he seeks to amend claims to include subject matter to which Evan Kraus (Mr. Kraus) contributed (and so also alter the inventive entity pursuant to 37 C.F.R. §1.48);
- on 3 January, 2006, Petitioner Jeff Kuester (Reg. No. 34,367) filed, *inter alia*, the original petition, an oath/declaration, which, notably, is not signed by any of the averred "signing" co-inventors–Scott Crandall Holt, Christopher Bertran Medders, Drina C. Yue, Raymond J. Smets, Thomas Joesph Moquin, Terry Durand and Lawrence R. Berke–as required by statute and regulation, or by the alleged non-signing inventor Mr. Kraus; while Petitioner

alleged that the entire application (description, claims, abstract and drawings) was transmitted to Mr. Kraus, the transmittal letter provided clearly evidenced that only the oath/declaration and the assignment were sent to Mr. Kraus, and there was no documentation supporting a contention that he received an Email transmission and was able to download/read the attachments thereto–therefore the petition was dismissed on 13 February, 2006;

- the instant petition seeks to overcome these deficiencies, and therewith Petitioner submits the statement of Benjamin Balser (Reg. No. 58,169) averring that the entire application was provided to Mr. Kraus and further that Mr. Kraus acknowledged to Mr. Balser receipt thereof.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, 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 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;

This application and its papers have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application hereby is **ACCORDED status under 37 C.F.R. §1.47(a)**.

As provided under 37 C.F.R. §1.47(a), the Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition.

Notice of the filing of this application also will be published in the Official Gazette.

This file is being released to OIPE for processing as necessary to reflect the instant decision before being released back to the Technology Center for further processing as required in due course.

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[2]) 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/Caller's action(s).

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

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(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]

[2] 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
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JJGJR.: 02-07

Paper No: __

EVAN KRAUS
1136 REEDER CIRCLE
ATLANTA, GA 30306

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MAR 0 1 2007

OFFICE OF PETITIONS

In re Application of :
Holt, et al. :
Application No. 08/876,839 : COMMUNICATION
Filed: 16 June, 1997 :
Attorney Docket No. 192600780 :

Dear Evan Kraus:

You are named as inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. §116 (United States Code), and 37 C.F.R. §1.47,[1] ¶a, Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your

---

[1] The regulations at 37 C.F.R. §1.47 provide:

§ 1.47 Filing when an inventor refuses to sign or cannot be reached.

(a) If a joint inventor refuses to join in an application for patent or cannot be found or reached after diligent effort, the application may be made by the other inventor on behalf of himself or herself and the nonsigning inventor. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, the fee set forth in §1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

(b) Whenever all of the inventors refuse to execute an application for patent, or cannot be found or reached after diligent effort, a person to whom an inventor has assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the matter justifying such action, may make application for patent on behalf of and as agent for all the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(h), and the last known address of all of the inventors. An inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

© The Office will send notice of the filing of the application to all inventors who have not joined in the application at the address(es) provided in the petition under this section, and publish notice of the filing of the application in the *Official Gazette*. The Office may dispense with this notice provision in a continuation or divisional application, if notice regarding the filing of the prior application was given to the nonsigning inventor(s).

[47 Fed. Reg. 41275, Sept. 17, 1982, effective Oct. 1, 1982; 48 Fed. Reg. 2709, Jan. 20, 1983, effective Feb. 27, 1983; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Nov. 7, 2000]

position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733.

Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or toll-free: (800) 972-6382 (outside the Washington D.C. area).

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[2]) 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/Caller's action(s).

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

Counsel of Record:
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100 GALLERIA PARKWAY
SUITE 1750
ATLANTA GA 30339

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[2] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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JUN 11 2007

OFFICE OF PETITIONS

In re Application of :
Holt, et al. :
Application No. 08/876,839 : ON PETITION
Filed: June 16, 1997 :
Attorney Docket No. 190251-1270 :

This is a decision on the petition under 37 CFR 1.48(c) to add Drina C. Yue, Raymond J. Smets, Thomas Joseph Moquin, Evan Kraus, Terry Durand, and Lawrence R. Berke as joint inventors of the above-identified application and the petition under 37 CFR 1.183 to waive the requirement that Evan Kraus provide a statement of lack of deceptive intent (37 CFR 1.48(c)(2)). In addition, this decision addresses the petition under 37 CFR 1.182 requesting entry of an amendment to the specification to insert a reference to earlier-filed applications pursuant to the provisions of 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition. All petitions were filed on January 3, 2006.

The petition under 37 CFR 1.183 to waive 37 CFR 1.48(a)(2) is **GRANTED**.

The petition under 37 CFR 1.48(c) is **GRANTED**.

The petition under 37 CFR 1.182 to enter an amendment to the specification regarding benefit of priority to prior-filed applications is **GRANTED**.

Petitions Re: Change in Inventive Entity

The application was filed on June 16, 1997. Two joint inventors were listed on the declaration filed on that day: Scott Crandall Holt and Christopher Bertram Medders. Petitioners seek to add Drina C. Yue, Raymond J. Smets, Thomas Joseph Moquin, Evan Kraus, Terry Durand, and Lawrence R. Berke as joint inventors of the above-identified application, due to claim amendments.

Rule 48 provides in pertinent part:

> (c): *Nonprovisional application-inventors added for claims to previously unclaimed subject matter*. If a nonprovisional application discloses unclaimed subject matter by an inventor or inventors not named in the application, the application may be amended to add claims to the subject matter and name the correct inventors for the application. Amendment of the inventorship requires:
>
> (1) A request to correct the inventorship that sets forth the desired inventorship change;
>
> (2) A statement from each person being added as an inventor that the addition is necessitated by amendment of the claims and that the inventorship error occurred without deceptive intention on his or her part;
>
> (3) An oath or declaration by the actual inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43, or § 1.47;
>
> (4) The processing fee set forth in § 1.17(i); and
>
> (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

Petitioners have complied with the requirements listed above.

With respect to (2) and (3) above, it is noted that a petition under 37 CFR 1.47(a), filed January 3, 2006, was granted March 1, 2007. This decision recognized Evan Kraus' refusal to join in the prosecution of this application. Therefore, Mr. Kraus' refusal to sign a lack of deceptive intent statement is strongly implied. A statement of lack of deceptive intent was purportedly transmitted to Mr. Kraus for his signature when the application and declaration were transmitted. Mr. Kraus refused to sign the declaration and assignment documents during a telephone call with Mr. Benjamin A. Balser. The Office finds this to be a constructive refusal to sign the lack of deceptive intent statement, as well. Accordingly, the petition under 37 CFR 1.183 to waive 37 CFR 1.48(c)(2) is **granted**.

Mr. Kraus' failure to sign the declaration is excused due to the March 1, 2007 granting of the Rule 47(a) petition. Therefore, (3) above is satisfied.

The petition under 37 CFR 1.48(c) is **granted**. The inventorship of this application has been changed by the addition of Drina C. Yue, Raymond J. Smets, Thomas Joseph Moquin, Evan Kraus, Terry Durand, and Lawrence R. Berke as joint inventors of the above-identified application.

Petition to Enter Delayed Benefit Claim

The above-noted application failed to make a specific reference to the prior-filed applications; namely, 08/469,491, filed June 6, 1995, and 07/936,384, filed August 26, 1992, when the application was filed. It is noted that the application was filed on June 16, 1997 and that two CPAs have been filed, on July 19, 2000 and on February 6, 2002. A petition to accept an unintentionally delayed claim under 37 CFR 1.178(a)(3) and the surcharge under 37 CFR 1.17(t) are not required in the CPA since the rule specifically provides for an exception for continued prosecution applications.

Petitioner now requests that the abandoned application (due to the filing of CPAs) be amended by inserting a reference to the earlier-filed applications. The petition is accompanied by an amendment to include a reference to the prior-filed applications in the first line of the specification following the title of the invention. Pursuant to petitioner's authorization, deposit account no. 20-0778 will be charged the required $130.00 petition fee, pursuant to 37 CFR 1.17(h).

35 U.S.C. § 120 permits entry of a subsequent amendment to an abandoned application in applications filed prior to November 29, 2000 to include the benefit of an earlier filing date for purposes other than prosecution. *See* Sampson v. Commissioner of Patents and Trademarks, 195 USPQ 136 (DC DC 1976).

In view thereof, the request for entry of an amendment to insert a reference to the above-noted, earlier-filed applications is **granted**. The amendment has been entered.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional applications and lists all the joint inventors, accompanies this decision on petition.

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

This application is being forwarded to Publications Division for processing into a patent.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
08/876,839	06/16/1997	2614	4186	192600780	16	4

CONFIRMATION NO. 5436

CORRECTED FILING RECEIPT

OC000000024251762

38823
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP/
BELLSOUTH I.P. CORP
100 GALLERIA PARKWAY
SUITE 1750
ATLANTA, GA 30339

Date Mailed: 06/06/2007

Receipt is acknowledged of a CPA in this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

SCOTT CRANDALL HOLT, DECATUR, GA;
CHRISTOPHER BERTRAM MEDDERS, WOODSTOCK, GA;
DRINA C. YUE, CENTRAL, HONG KONG;
RAYMOND J. SMETS, ALPHARETTA, GA;
THOMAS JOSEPH MOQUIN, ALPHARETTA, GA;
EVAN KRAUS, ATLANTA, GA;
TERRY DURAND, ROSWELL, GA;
LAWRENCE R. BERKE, ALPHARETTA, GA;

Power of Attorney: The patent practitioners associated with Customer Number **24504**.

Domestic Priority data as claimed by applicant

This application is a CIP of 08/469,491 06/06/1995 PAT 5,764,747
which is a CON of 07/936,384 08/26/1992 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 11/14/1997

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US08/876,839

CPA filed on: 07/19/2000

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

METHOD AND APPARATUS FOR ROUTING CALLS BASED ON IDENTIFICATION OF THE CALLING PARTY OR CALLING LINE

Preliminary Class

379

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No. 31

D BYRON MILLER
ALZA CORPORATION
950 PAGE MILL ROAD
PALO ALTO, CA 94303-0802

COPY MAILED

FEB 0 2 2005

OFFICE OF PETITIONS

In re Application of :
Michel J. N. Cormier et al :
Application No. 08/877,155 : ON PETITION
Filed: June 17, 1997 :
Attorney Docket No. ARC2466R1 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 14, 2005, 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 September 6, 2001, 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 December 7, 2001.

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

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

This file is being forwarded to Technology Center AU 3763 for further processing.

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

cc:

Ralph Francis
Francis Law Group
1942 Embarcadero
Oakland, CA 94606

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070405

DATE : April 5, 2007

TO SPE OF : ART UNIT 1615

SUBJECT : Request for Certificate of Correction on Patent No.: 7,184,826 B2

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

The title was changed in the Amendment filed December 23, 1998, but the former title was printed. This COFC merely corrects a printing error.

Sharon E Kennedy
SHARON E. KENNEDY
PRIMARY EXAMINER

M P Woodward
SPE: Michael P. Woodward **Art Unit** 1615

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

KM:7-01

Paper No: 27

EXXON CHEMICAL COMPANY
LAW TECHNOLOGY
P.O. BOX 2149
BAYTOWN, TX 77522

COPY MAILED

AUG 1 0 2001

OFFICE OF PETITIONS

In re Application of
Vaughn et al.
Filed: 17 June, 1997
Application No. 08/877,684
Attorney Docket No. 96B035/2

ON PETITION

This is a decision on the petition filed herein on 26 July, 2001, under ¶ "b" of 37 C.F.R. §1.137.[1] to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision under 37 C.F.R. § (e) must be submitted (with fee) 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

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1

The regulations at 37 C.F.R. §1.137 provide:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

***

(b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in §1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply.* In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

***

[47 Fed. Reg. 41277, Sept. 17, 1982, effective Oct. 1, 1982; para. (b) 48 Fed. Reg. 2713, Jan. 20, 1983, effective Feb. 27, 1983; paras. (a) - (c), paras. (d) & (e) added, 58 Fed. Reg. 44277, Aug. 20,1993, effective Sept. 20, 1993; para. (c) revised, 60 Fed. Reg. 20195, Apr. 25, 1995, effective June 8, 1995; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Sept. 8, 2000; revised, 65 Fed. Reg. 57024, Sept. 20, 2000, effective Nov. 29, 2000]

Petition under 37 C.F.R. § (b)." Thereafter, there will be no further reconsideration of this matter.[2]

The record indicates that:

- petitioner failed to timely respond to the final Office action mailed on 3 November, 2000, with a shortened statutory deadline of 3 February, 2001 (a Saturday, allowing an acceptable mailing date of 5 February, 2001);
- a three (3) month extension of time and an amendment under 37 C.F.R. 116 were filed on 10 May, 2001 (with a certificate of mailing dated 3 May, 2001) but the amendment was not a proper response to the final Office action, as reflected by the Advisory Action mailed on 23 May, 2001[3];
- the application became abandoned at midnight on 3 May, 2001;
- a Notice of Abandonment was mailed on 18 June, 2001.

The petition does not comply with the requirement for a response to the outstanding Action, because the amendment submitted therewith does not clearly place the application in condition for allowance, and because the Request for Continued Examination and required fee referred to in the petition were not received.

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

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[2] For more than a century punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586; (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

If, on request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) the provisions of 37 C.F.R. §1.137(e) will not apply to that decision.

[3] The proper response to the final Office action (see: Fn. 1, item (1); MPEP 711.03(c)) must be in the form of: (a) an amendment *prima facie* placing the application in condition for allowance; (b) a Notice of Appeal; or (c) a continuing application.

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 Kathy Matecki at (703) 305-9282.

John J. Gillon, Jr.
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
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

KM:8-01

Paper No: 31

EXXONMOBIL CHEMICAL COMPANY
LAW TECHNOLOGY
P.O. BOX 2149
BAYTOWN, TX 77522-2149

COPY MAILED

AUG 2 9 2001

OFFICE OF PETITIONS

In re Application of
Vaughn et al.
Filed: 17 June, 1997
Application No. 08/877,684
Attorney Docket No. 96B035/2

ON PETITION

This is a decision on the renewed petition filed herein on 17 August, 2001, under ¶ "b" of 37 C.F.R. §1.137.[1] to revive the above-identified application.

The petition is **GRANTED**.

The record indicates that:

- Petitioner failed to timely respond to the final Office action mailed on 3 November, 2000, with a shortened statutory deadline of 3 February,

---

[1] The regulations at 37 C.F.R. §1.137 provide:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

***

(b) *Unintentional.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination proceeding terminated under §§1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in §1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply.* In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

***

[47 Fed. Reg. 41277, Sept. 17, 1982, effective Oct. 1, 1982; para. (b) 48 Fed. Reg. 2713, Jan. 20, 1983, effective Feb. 27, 1983; paras. (a) - (c), paras. (d) & (e) added, 58 Fed. Reg. 44277, Aug. 20,1993, effective Sept. 20, 1993; para. (c) revised, 60 Fed. Reg. 20195, Apr. 25, 1995, effective June 8, 1995; revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (c) revised, 65 Fed. Reg. 54604, Sept. 8, 2000, effective Sept. 8, 2000; revised, 65 Fed. Reg. 57024, Sept. 20, 2000, effective Nov. 29, 2000]

2001 (a Saturday, allowing an acceptable mailing date of 5 February, 2001);

- a three (3) month extension of time and an amendment under 37 C.F.R. 116 were filed on 10 May, 2001 (with a certificate of mailing dated 3 May, 2001) but the amendment was not a proper response to the final Office action, as reflected by the Advisory Action mailed on 23 May, 2001[2];
- the application became abandoned at midnight on 3 May, 2001;
- a Notice of Abandonment was mailed on 18 June, 2001
- a Request for Continued Examination and a reply to the previous Office action were filed on 17 August, 2001.

This application will be forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to Kathy Matecki at (703) 305-1645.

John J. Gillon, Jr.
Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[2] The proper response to the final Office action (see: Fn. 1, item (1); MPEP 711.03(c)) must be in the form of: (a) an amendment *prima facie* placing the application in condition for allowance; (b) a Notice of Appeal; or (c) a continuing application.

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. 5875562
Issue Date: March 2,1999
Application No. 08878055
Filed: June 18,1997
Attorney Docket No. P97246

:
: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.

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)
5875562	1999-03-02	08878055	1997-06-18	

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

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	/ShaunFogarty/	Date (YYYY-MM-DD)	2008-12-10
Name	Shaun Fogarty		

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
WASHINGTON, D.C. 20231
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Paper No. 5

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

HARVEY LUNENFELD
8 PATRICIAN DRIVE
EAST NORTHPORT, NY 11731

In re Application of
Anthony Puma, et al
Application No. 08/878,356
Filed: June 18, 1997
Attorney Docket No. None

DECISION GRANTING PETITION

This is a decision on the petition filed January 14, 1998, requesting that the above-identified application be treated as a regular continuation-in-part application under 37 CFR 1.53. The Office apologizes for the delay in responding to this petition and any inconvenience caused applicants.

A review of the record discloses that on June 18, 1997, the application was deposited as a continuation-in-part application under 37 CFR 1.60[1]. While the transmittal letter indicated a true copy of the prior application was being filed, no copy of the specification has been found. The filing included, inter alia, a preliminary amendment, 21 sheets of drawing, small entity declaration and a declaration under 37 CFR 1.63 signed by one of the three joint inventors.

Applicants are reminded that 37 CFR 1.60 clearly stated on June 18, 1997 that a continuation or divisional application for an invention disclosed in a prior nonprovisional application may be filed under this section provided applicant files, inter alia, "a true copy of the prior complete application as filed including the specification..." In this case, a continuation-in-part application is requested under 37 CFR 1.60 and the copy of the specification from the prior application is missing. The rule further states that the application will not be given a filing date earlier than the date upon which the copy is filed unless a petition with the requisite petition fee is filed which satisfactorily explains the delay in filing the missing items.

On November 14, 1997, Initial Patent Examination Division mailed a Notice of Improper Application filed under 37 CFR 1.60 which included a handwritten notation which read "under 37 CFR 1.60 you cannot file a Cont. In Part. You must submit a petition to convert."

---

[1]37 CFR §1.62 and §1.60 were deleted from title 37 of the Code of Federal Regulation effective December 1, 1997. See Notice of Final Rule, 62 Fed. Reg. 53132 (October 10, 1997).

In response, on January 14, 1998, the present petition was filed. Petitioners indicate that the application was inadvertently filed under 37 CFR 1.60. Petitioners request, in effect, that the PTO disregard the 37 CFR 1.60 request and treat the application as a regular CIP application under 37 CFR 1.53.

Absent a complete specification, the relief applicants seek is inconsistent with 37 CFR 1.53. However, as the PTO notice mailed November 14, 1997, did not clearly note that under the circumstances of this case, applicants must submit a petition to convert **the application to an application under 37 CFR 1.62**, the present petition is being construed as a request therefor.

The petition as construed is granted. The application will be treated as a continuation-in-part application under 37 CFR 1.62.

As the record has shown, an executed oath or declaration in compliance with 37 CFR 1.63 is required in this application. Accordingly, applicants are given ONE MONTH from the date of this decision to file an oath or declaration complying with 37 CFR 1.63 and to pay the $130.00 surcharge set forth in 37 CFR 1.16(e). This time period may be extended pursuant to 37 CFR 1.136(a). The oath or declaration should identify the specification to which it is directed by reference to the above application number and filing date. The response should be directed to the attention of Initial Patent Examination Division. Failure to respond will result in the abandonment of this application.

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220.

The application is being returned to Initial Patent Examining Division to await the response required herein and then for reprocessing with a filing date of June 18, 1997, as a continuation-in-part application under 37 CFR 1.62, not an application under 37 CFR 1.60 of prior application No. 08/664,406.

Sherry D. Brinkley
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

PATENT GROUP 2N
JONES DAY
NORTH POINT
901 LAKESIDE AVENUE
CLEVELAND OH 44114

In re Patent of Andrew C. Payne et al. : DECISION ON PETITION
PATENT NO. 5,909,492
SERIAL NO. 08/878,396
FILED: June 18, 1997
FOR: NETWORK SALES SYSTEM

This is a decision on the petition filed January 5, 2001 to correct inventorship under 37 CFR 1.324.

The petition is Granted.

The patented file is being forwarded to Certificates of Correction Branch for issuance of a certificate naming the actual inventors.

/Thomas H. Tarcza/

Thomas H. Tarcza
Supervisory Patent Examiner
Art Unit 3662
571-272-6979

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091006

DATE : October 7, 2009

TO SPE OF : ART UNIT 3662

SUBJECT : Request for Certificate of Correction on Patent No.: 5909492

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: /Thomas H. Tarcza/ **Art Unit** 3662

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

Certificate

Patent No. 5,909,492
Patented : June 1, 1999

On petition requesting issuance of a certificate of inventorship pursuant to 35USC 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:

Andrew C. Payne, Lincoln, Massachusetts
Lawrence C, Stewart, Wayland, Massachusetts
G. Winfield Treese , Wayland, Massachusetts

Signed and Sealed this Sixth day of October, 2009.

Thomas H. Tarcza
Supervisory Patent Examiner
Art Unit 3662

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. 6013532
Issue Date: January 11,2000
Application No. 08878617
Filed: June 19,1997
Attorney Docket No.

:
: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 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 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.

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)
6013532	2000-01-11	08878617	1997-06-19	VDX5112DIV1

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	/Joseph F. Aceto/	Date (YYYY-MM-DD)	2009-09-03
Name	Joseph F. Aceto	Registration Number	50701

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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ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

MAILED
JAN 10 2000
Office of Director
Technology Center 1600

Paper Number 12

In re Application of :
MERRIL et al :
Serial No. 08/879,139 :
Filed: June 19,1997 :
For: ANTIBACTERIL THERAPY WITH :
BACTERIOPHAGE GENOTYPI- :
CALLY MODIFIED TO DELAY :
INACTIVATION BY THE HOST :
DEFENSE SYSTEM

This is a decision on the petition, filed June 22, 1999, to withdraw the holding of abandonment under 37 CFR 1.181.

On October 2, 1998, an Office action was mailed to applicants, rejecting claims 31-40, all the claims in the application. On June 24, 1999, a Notice of Abandonment was mailed which indicated that the application was abandoned for failing to timely file a proper response to the office action mailed on October 2, 1998. On June 22, 1999, the present petition to withdraw the holding of abandonment was filed. The petition asserted that the Office action mailed on October 2, 1998 was never received.

The petition of June 24, 1999 provides the evidence required by 1156 O.G. 53 in support of the allegation of nonreceipt of the Office action in question. Accordingly, the petition is granted. The application has been returned to pending status and the Office action mailed on October 2, 1998 is being re-mailed herewith, with a response date to expire three (3) months from the date of this decision.

PETITION GRANTED.

Charles Tsang for
John Doll, Director
Technology Center 1600

Monica Chin Kitts
Metropolitan Square
655 Fifteenth Street, N.W.
Suite 330 – G-Street Lobby
Washington, D.C. 20005-5701

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 17 2001

#17

In re Application of:
Merril et al
Serial No.: 08/879,139
Filing Date: June 19, 1997
For: ANTIBACTERIAL THERAPY WITH BACTERIOPHAGE GENOTYPICALLY MODIFIED TO DELAY INACTIVATION BY THE HOST DEFENSE SYSTEM
Attorney's Docket No.: 108026-07004

PETITION DECISION

This is in response to "PETITION TO WITHDRAW HOLDING OF ABANDONMENT" filed October 17, 2001.

On January 10, 2000, a decision on petition granting the petition and the office action dated October 2, 1998 were mailed to applicant, the letter set a response date to expire three months from the date of the petition. On March 27, 2001 a second Notice of Abandonment was mailed to applicant. On October 17, 2001, the present petition was filed.

Petitioner asserts that a Petition to Withdraw Holding of Abandonment was filed on June 21, 1999 after receiving the first Notice of Abandonment. A request for Status of Petition was filed August 11, 1999, to which no reply had been received. Petitioner asserts that the Decision granting the petition of June 21, 1999 mailed on January 10, 2000 and the re-mailed Office action were never received by the applicant.

The petition of October 17, 2001 provides the evidence required by 1156 O.G. 53 in support of the allegation of nonreceipt of the Decision mailed on January 10, 2000 and Office action mailed October 2, 1998 and re-mailed on January 10, 2000. Accordingly, the petition is Granted. The application has been returned to pending status and the Decision of January 10, 2000 and Office action dated October 2, 1998 are being re-mailed herewith. The time to response to the Office action is set to expire Three (3) months from the date of this decision.

PETITION GRANTED.

Cecilia Tsay for
Bruce Kisliuk
Director, Technology Center 1600

D. Daniel Dzara, II
1050 Connecticut Avenue, N.W., Suite 400
Washington, D.C. 20036-5339

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	3968
CONNECTION TEL	92026384810
SUBADDRESS	
CONNECTION ID	
ST. TIME	04/22 16:51
USAGE T	00'56
PGS.	2
RESULT	OK

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DATE: 4-23-02

TO: Kathy Arnheim

FAX NO: 202-638-4808

PAGES: 2

FROM: John Doll, Director Technology Center 1600
Art Units 1610; 1630 and 1660
Betty Kaminsky, Secretary Technology Center 1600
Art Units 1610; 1630 and 1660

Bruce Kisliuk, Director Technology Center 1600
Art Units 1620; 1640 and 1650
Vickie Beach, Secretary Technology Center 1600
Art Units 1620; 1640 and 1650

Biotechnology, Organic Chemistry & Pharmaceuticals

Director Office Phone Number	703-308-1123
Director Office Fax Number	703-305-7230
Receptionist Phone Number	703-308-1234

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JOHN H. SHERMAN, LEGAL DEPARTMENT
INTERMEC TECHNOLOGIES CORPORATION
5502ND STREET S.E.
CEDAR RAPIDS, IA 52401

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SEP 1 8 2006

OFFICE OF PETITIONS

In re Application of
Durbin et al.
Application No. 08/879,467
Filed: June 20, 1997
Attorney Docket Number: DN38240R1

Title of Invention: Code Reader performing Coded Image Decoding Using Non-Dedicated Decode Processor

ON PETITION

This is a decision on the petition filed August 26, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

Any request for reconsideration 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.

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 and submit corrected drawings, as required by the Notice of Allowability both of which were mailed May 24, 2006. The Notice of Allowance and Fee (s) Due and the Notice of Allowability 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 August 25, 2006. A Notice of Abandonment was mailed on August 25, 2006.

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 intentional"; 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 Director may require additional information. See MPEP 711.03 (c)(III)(c) and (D).

The instant petition lacks items (1). Petitioner has failed to submit corrected drawings as required by the Notice of Allowability. Corrected drawings must be submitted before the petition can be revived.

There is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted.

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:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema R. Grant

Charlema R. Grant
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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JOHN H. SHERMAN, LEGAL DEPT.
INTERMEC TECHNOLOGIES CORPORATION
550 2ND STREET SE
CEDAR RAPIDS IA 52401

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FEB 05 2007

OFFICE OF PETITIONS

In re Application of
Durbin et al.
Application No. 08/879,467
Filed: June 20, 1997
Attorney Docket Number: DN38240R1
Title of Invention: Code Reader performing Coded Image Decoding Using Non-Dedicated Decode Processor

ON PETITION

This is a decision on the renewed petition filed October 17, 2006, under 37 CFR 1.137(b) to revive the above-identified application.

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 and submit corrected drawings, as required by the Notice of Allowability both of which were mailed May 24, 2006. The Notice of Allowance and Fee (s) Due and the Notice of Allowability 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 August 25, 2006. A petition was dismissed under 37 CFR 1.137(b) on September 18, 2006. A Notice of Abandonment was mailed on September 28, 2006.

The requirements for a grantable petition under 37 CFR 1.137(b) have been met. This petition is hereby **Granted**.

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
08/879,467	06/20/1997	DENNIS A. DURBIN	DN38240R1

CONFIRMATION NO. 9545

JOHN H. SHERMAN, LEGAL DEPARTMENT
INTERMEC TECHNOLOGIES CORPORATION
5502ND STREET S.E.
CEDAR RAPIDS, IA 52401

OC000000022327210
OC000000022327210

Date Mailed: 02/05/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/17/2006.

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

C. Grant

CHARLEMA R GRANT
OP (571) 272-3215

NEW ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
08/879,467	06/20/1997	DENNIS A. DURBIN	DN38240R1

CONFIRMATION NO. 9545

OC000000022327210

OC000000022327210

JOHN H. SHERMAN, LEGAL DEPARTMENT
INTERMEC TECHNOLOGIES CORPORATION
5502ND STREET S.E.
CEDAR RAPIDS, IA 52401

Date Mailed: 02/05/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/17/2006.

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

C. Grant

CHARLEMA R GRANT
OP (571) 272-3215

FORMER ATTORNEY/AGENT COPY

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
08/879,467	06/20/1997	DENNIS A. DURBIN	DN38240R1

CONFIRMATION NO. 9545

OC000000022327226

OC000000022327226

30993
JOHN H. SHERMAN, LEGAL DEPT.
INTERMEC TECHNOLOGIES CORPORATION
550 2ND STREET SE
CEDAR RAPIDS, IA 52401

Date Mailed: 02/05/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/17/2006.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

C. Grant

CHARLEMA R GRANT
OP (571) 272-3215

ATTORNEY/APPLICANT COPY

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 51

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

COPY MAILED

DEC 0 8 2004

OFFICE OF PETITIONS

In re Application of
Robert A. Murgita
Application No. 08/879,469
Filed: June 20, 1997
Attorney Docket No.: 06727/006001

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed July 30, 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(a)" or "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on June 24, 2003, for failure to pay the issue fee in response to the Notice of Allowance mailed March 21, 2003 and which set a three (3) month period for reply. Accordingly, a Notice of Abandonment was mailed March 31, 2004.

Petitioner asserts that the Notice of Allowance was mailed to an incorrect address.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

> (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) the petition fee as set forth in § 1.17(l);
(3) 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 this paragraph was unavoidable; and
(4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (c) of this section.

This petition lacks items (3) above.

With regard to item (3), decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[1]

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure or mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[2]

Petitioner asserts that a "Request for Customer Number Data Change" was submitted March 14, 2002 specifically to change the correspondence address associated with

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[1] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." 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).

[2] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

customer number 21559 and thus all applications associated with that customer number. By way of example, petitioner submits a copy of the "Request" and that of two other customer numbers for which a similar request was submitted on the same day.

A review of the record reveals that while the "Request for Customer Number Data Change" was also submitted for customer numbers 31,020 and 30,091, the record reveals that on those forms the box for changing the address was actually checked thus indicating the desired request. However, in the case of the "Request" for customer number 21559, the box wasn't checked.

For the purposes of whether the act of submitting the "Request" without having checked the box for changing the correspondence address, it can't be assumed that the "Request" filed for customer number 21559 on March 14, 2002 was for changing the correspondence address and thus does not reach the level of unavoidable delay. The additional evidence submitted is in the form of correspondence between the USPTO and the petitioner and was submitted to show the continued efforts on the part of the petitioner to correct data for customer number 21559 which would include the address associated with that customer number. However, those efforts were all after the date the Notice of Allowance and Notice of Allowability were mailed and can't therefore be used to show that the petitioner "acted diligently to update the correspondence address in the present application", prior to the date the Notices were mailed, as was indicated in the petition.

The sequence of events are unfortunate but the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a), and the petition will be dismissed.

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[3]

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[3]Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 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

which now provides 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).

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

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

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

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

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

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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©)).

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BOSTON MA 02110

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JAN 1 3 2005

OFFICE OF PETITIONS

In re Application of
Robert A. Murgita
Application No. 08/879,469
Filed: June 20, 1997
Attorney Docket No.: 06727/006001

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b),[1] filed December 27, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on June 24, 2003, for failure to pay the issue fee in response to the Notice of Allowance mailed March 21, 2003 and which set a three (3) month period for reply. Accordingly, a Notice of Abandonment was mailed March 31, 2004. A petition to revive under 37 CFR 1.137(a) was filed July 30, 2004 but was dismissed in a decision mailed December 8, 2004.

Comes now the instant petition to revive under the unintentional standard.

The issue fee was previously paid with the petition filed July 30, 2004. The difference between the fee set at that time and the current fee has been applied to the finance records for this application. The application is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[1] Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(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©)).

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. 16

Norman Carte
P.O. Box 1950
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92628-1950

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APR 2 6 2004

OFFICE OF PETITIONS

In re Patent No. 5,908,997
Issue Date: June 1, 1999
Application No. 08/879,678
Filed: June 23, 1997
Patentee(s) Rob C. Arnold, et. al.

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed April 8, 2004, to accept the delayed payment of a maintenance fee for the above-identified patent.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the delay in filing a timely response was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay in paying the maintenance fee was in fact unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay in paying the maintenance fee was intentional, petitioner must so notify the Office. Also, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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.

If petitioner desires to receive future correspondence, which **may** be mailed, regarding maintenance fees for the above-identified patent, the attached "fee address" and/or "customer number" forms should be submitted.

The patent file is being forwarded to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosures: Fee Address Indication Form (PTO/SB/47)
Request for Customer Number (PTO/SB/125)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 21

Townsend, Townsend & Crew, LLP
Two Embarcadero Center
Eighth Floor
San Francisco, California 94111-3834

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MAR 29 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
K. Diane Jofuku, et al. :
Application No. 08/879,827 : ON PETITION
Filed: June 20, 1997 :
Attorney Docket No. 023070067210 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 1, 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 11, 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 August 12, 2000.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

Telephone inquiries concerning this decision should be directed to Retta Williams at (703) 306-5594.

The application file is being forwarded to the Technology Center 1600.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne Morgan

Marianne Morgan
Petitions Examiner

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. 29

TOWNSEND AND TOWNSEND AND CREW LLP
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SAN FRANCISCO CA 94111-3834

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DEC 2 4 2002

OFFICE OF PETITIONS

In re Application of
Jofuku, et al.
Application No. 08/879,827
Filed: June 20, 1997
Attorney Docket No. 023070067210

DECISION ON PETITION

This is a decision on the petition filed May 31, 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 file a Appeal Brief. A Notice of Appeal was filed with a petition to revive under 37 CFR 1.137(b) on November 24, 2000.[1] The application had previously gone abandoned for failure to timely file a reply to a non-final Office action mailed May 11, 2000. The petition was granted in a decision mailed on March 29, 2001. Accordingly, applicant had two months from the mail date of the decision, or until May 29, 2001, to file an Appeal Brief in triplicate. No Appeal Brief with an extension of time having been received, the above-identified application became abandoned on May 30, 2001. A Notice of Abandonment was mailed on February 13, 2002.

With the instant petition, petitioner filed an amendment and a Terminal Disclaimer in response to the May 11, 2000 Office action. In addition, petitioner paid the petition fee and made the proper statement of unintentional delay as required by 37 CFR 1.137(b).

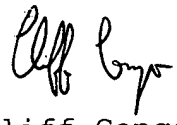
Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the $55 extension of time fee submitted with the petition on May 31, 2002 was subsequent to the maximum period obtainable for reply (October 29, 2001), this fee will be refunded to petitioner under separate cover.

---

[1] The Notice of Appeal was proper as the claims had been twice rejected. See 37 CFR 1.191(a).

The application file is being forwarded to Technology Center 1600 for consideration of the amendment and the Terminal Disclaimer, both filed May 31, 2002.

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 & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 12/23/02

2 Serial/Patent # 08/879,827

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
✓	Extension of Time	27	5/31/02	$ 55.00
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND: $ 55.00

8 TO BE REFUNDED BY:

✓ Treasury Check

Credit Deposit A/C #:

9 [ ][ ]--[ ][ ][ ][ ]

10 REASON:

	Overpayment
	Duplicate Payment
✓	No Fee Due (Explanation):

Applicant filed an extension of time beyond the maximum period obtainable for rep/y.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Cliff Congo TITLE: Petitions Attorney

SIGNATURE: Cliff Congo PHONE: 305-0272

OFFICE: Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Keller DATE: 12/24/02

Instructions for completion of this form appear on the back. After completion, attach white and yellow copies to the official file and mail or hand-carry to:

Office of Finance
Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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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JAN 17 2007

OFFICE OF PETITIONS

In re Patent No. 6,846,669	:	
Issued: January 25, 2005	:	
Application No. 08/879,827	:	NOTICE
Filed: June 20, 1997	:	
Patentee: K. Diane Jofuku, et al.	:	

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 no longer qualifies for small entity status. Accordingly, all future fees must be paid at the large entity rate.

Inquiries related to this communication should be directed to the Office of Petitions Staff at (571) 272-3282.

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

In re Patent No. 5876415
Issue Date: March 2,1999
Application No. 08879867
Filed: June 20,1997
Attorney Docket No. P-3727

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

This is a decision on the electronic petition, filed March 16,2007 ,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 16,2007 . 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)
5,876,415	1999-03-02	08/879,867	1997-06-20	P-3727

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 J. Murtha/	Date (YYYY-MM-DD)	2007-03-16
Name	James J. Murtha	Registration Number	35769

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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 18

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SPECIAL PROGRAMS OFFICE
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RICHARD J. WARD
CHRISIE PARKER & HALE
P.O. BOX 7068
PASADENA CA 91109-7068

In re Application of :
Michael L. Obradovich et al :
Application No. 08/879,955 : ON PETITION
Filed: June 20, 1997 :
Attorney Docket No. 30675-RJW-C6 :

This is a decision on the petition, filed February 10. 2000, under 37 CFR 1.313(c)(3) 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 in favor of a continued prosecution application (CPA) under 37 CFR 1.53(d).

Petitioner is advised that the issue fee paid on January 3, 2000 in the parent application is not refundable nor can it be applied towards any new Notice of Allowance which may issue on the CPA filed February 10, 2000.

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

The application is being forwarded to Technology Center 3600 for processing of the CPA.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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))

Docket Number (Optional)
1218P

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. 5,901,335 Application Number 08/880,109

Issue Date 05/04/1999 Filing Date 06/20/1997

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 _____

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.

1. SMALL ENTITY

[X] 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)
[ ] $ 980.00	3 ½ yr fee	(1551)	[ ] $ 490.00	3 ½ yr fee	(2551)
[ ] $ 2,480.00	7 ½ yr fee	(1552)	[X] $ 1,240.00	7 ½ yr fee	(2552)
[ ] $ 4,110.00	11 ½ yr fee	(1553)	[ ] $ 2,055.00	11 ½ yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED $ 1,240.00

4. SURCHARGE

The surcharge required by 37 CFR 1.20 (i)(2) of $1,640.00 (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

SURCHARGE BEING SUBMITTED $ 1,640.00

5. MANNER OF PAYMENT

[ ] Enclosed is a check for the sum of $_____ .

[X] Please charge to Deposit Account No. **02-2120** (Sawyer) the sum of **$ 2,880.00**

[ ] Payment by credit card. Form PTO-2038 is attached.

6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

[X] The Director is hereby authorized to charge any maintenance fee, surcharge or petition deficiency to Deposit Account No. 02-2120 (Sawyer).

7. OVERPAYMENT

As to any overpayment made please

[X] Credit to Deposit Account No. 02-2120 (Sawyer).

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) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

/Joseph A. Sawyer, Jr./ — Signature(s) of Petitioner(s)

7/27/2010 — Date

Joseph A. Sawyer, Jr. — Typed or printed name(s)

30,801 — Registration Number, if applicable

(650) 493-4540 — Telephone Number

Sawyer Law Group, P.C. — Address

2465 E. Bayshore Road, Suite 406, Palo Alto, CA 94313 — 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

[X] Maintenance Fee payment

[X] Surcharge under 37 CFR 1.20(i)(2) (fee for filing the maintenance fee petition)

[ ] _____

_____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent of: Geum-Cheol KIM	Confirmation No.: 1552
Patent No: 5,901,335	Issue Date: 5/4/1999
Serial No: 08/880,109	Filed: 6/20/1997
Group Art Unit: 2758	Examiner: Vu, Viet Duy

For: CIRCUIT DETECTING A SYNCHRONOUS WORD SIGNAL FROM A MPEG BIG STREAM IN VIDEO-AUDIO DECODING SYSTEM

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

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

The payment of the maintenance fee for the above-referenced patent application, U.S. Patent No. 5,901,335 was unintentionally delayed, resulting in an expired patent.

1. There are three periods to be considered during the evaluation of a petition under 35 CFR 1.137(b):

(1) The delay in reply that originally resulted in the abandonment;

(2) The delay in filing an initial petition pursuant to 35 CFR 1.137(b) to revive the petition; and

(3) The delay in filing a grantable petition pursuant to 37 CFR 1.137(b) to revive the application.

The question under 37 CFR 1.137(b) is whether the entire delay on the part

of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional.

For all three of these periods the delay was unintentional by both the Patentee and the undersigned attorney. Accordingly, Patentee respectfully requests reinstatement of the above identified patent.

As background, the Patentee asked Sawyer Law Group to file a Power of Attorney as well as a statement under 37 CFR 3.73b in the office and to take over representation of the patent on or about July 2007. Patentee had recently acquired the patent and wanted it kept in force. Although the POA and a statement under 37 CFR 3.73b were prepared, they were never filed or docketed by the responsible party. The responsible party for filing and docketing this item was Ms. Nikia McNillion, a lead paralegal/office manager hired by Sawyer Law Group in January 2007. Ms. McNillion was hired on the belief that she was an experienced and knowledgeable IP manager with extensive prosecution, administrative and docketing experience. Ms. McNillion began assisting with overflow work under the supervision of the managing attorney and lead paralegal. Gradually, Ms. McNillion assumed full control of docketing and filing processes. By mid-2007 Ms. McNillion replaced the lead paralegal filing clerk. With Ms. McNillion's reputed background and experience, the managing attorney of Sawyer Law Group had every confidence that Ms. McNillion could carry out her duties in a timely and expedient manner.

By 2008 it became evident that Ms. McNillion was not carrying out her duties as contracted. Not only was Ms. McNillion not maintaining Sawyer Law Group's

client service standards, but she was actively maneuvering against the Firm, the details of which are the subject of the attached Complaint, Case No. 180CV129432 filed in Superior Court of California. Recently orders against her have been obtained in which a default judgement has been entered (copy attached) and Sawyer Law Group is currently seeking monetary damages from her. Ms. McNillion's actions affect the present case in two ways, explained as follows:

Firstly, the undersigned attorney asserts that Ms. McNillion intentionally and maliciously altered successful existing procedures, without authority or approval by the managing attorney. Ms Jackie Tanda who worked for Sawyer Law Group for over ten years as the docketing paralegal and transferred responsibility for the docketing processes to Ms McNillion. Ms. Tanda came back to work for Sawyer Law Group on or about January 11, 2010. One of her responsibilities was to audit the docketing system upon her return. As shown by her attached declaration, from the audit Ms. Tanda it is clear that Ms McNillion significantly altered the docketing system and changed procedures associated therewith. Specifically, Ms. McNillion stopped docketing items in the Sawyer Law Group shortly after Ms. Tanda left the Sawyer Law Group.

Secondly, by altering the docketing system and its associated procedures, Ms. McNillion maliciously and intentionally damaged the Firm. With regard to the maintenance fee due for the above identified patent Ms McNillion did not enter this due date in the docketing system. In so doing, neither the Patentee nor the undersigned attorney realized that the maintenance fee was due and/or had not

been paid. Therefore, the undersigned attorney only became aware that the maintenance fee had not been paid on or about June 23, 2010.

By the attached complaint and orders, it has been established that Ms. McNillion organized an exodus of staff from the Firm for the purposes of establishing her own IP administration service. This exodus made it difficult to hire competent people and significantly affected the operation of the Firm. It took over 18 months from the time Ms. McNillion left the Firm, to hire competent administrative staff. Ms. McNillion pilfered the Firm's client list, document templates and records database and attempted to solicit the Firm's clients on her own.

By Ms. McNillion not performing the docketing in a competent manner, in many cases, as well as in this particular case, matters were not filed and deadlines were not docketed. The undersigned attorney did not become aware of many of these issues until they were brought to his attention by clients or others. In this instance the expiration of the above identified patent due to nonpayment of the maintenance fee came to the undersigned attorney's attention via a correspondence from the Patentee on or about June 23, 2010 (copy of email attached). In fact we have not been able to locate the original physical file due to Ms. McNillion's conduct.

It would be a manifestly unjust for the Patentee to lose their rights in this patent due to Ms. McNillion's conduct. The Patentee and the undersigned attorney never had any intention to abandon this patent and had every intention that the patent be kept in force as shown by the email dated June 23, 2010. Accordingly, as before mentioned, it would be manifestly unjust to the Patentee to not reinstate the

above-identified patent of the unintentionally delayed payment of the maintenance fees based upon Ms. McNillion's conduct.

Accordingly, the Patentee respectfully requests that this petition to revive be granted for the unintentionally delayed payment of the maintenance fees based on the above-identified reasons. If the Examiner has any questions or would like to discuss this matter, please contact Patentee's attorney at the telephone number indicated below.

Respectfully submitted,

7/27/2010

/Joseph A. Sawyer, Jr./
Joseph A. Sawyer, Jr.
Attorney for Applicants
Reg. No.: 30,801

Sawyer Law Group, P.C.
2465 E. Bayshore Road, Suite 406
Palo Alto, CA 94303
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sawyer@sawyerlawgroup.com

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

Anne Vachon Dougherty
3173 Cedar Road
Yorktown Heights NY 10598

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MAY 19 2003

OFFICE OF PETITIONS

In re Application of :
Cohen et al. :
Application No. 08/880,616 : ON PETITION
Filed: June 23, 1997 :
Attorney Docket No. YO997-111 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 22, 2003, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to file a timely Appeal Brief in reply to the Notice of Appeal of June 28, 2002, as provided in 37 CFR 1.192(a). Petitioner obtained a one-month extension of time to respond. Accordingly, this application became abandoned on September 29, 2002.

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 this paragraph was unintentional" be submitted. However, the statement presented will be accepted and construed as the statement required by 37 CFR 1.137(b)(3). Petitioner must notify the Office if this is not a correct interpretation of the statement contained in the present petition.

The application file is being forwarded to Technology Center 2100 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior 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)
5885398	1999-03-23	08881894	1997-06-24	WORTH.3199

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	/Arlene J. Powers/	Date (YYYY-MM-DD)	2007-06-07
Name	Arlene J. Powers	Registration Number	35985

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. 5885398
Issue Date: March 23,1999
Application No. 08881894
Filed: June 24,1997
Attorney Docket No. 3199

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

This is a decision on the electronic petition, filed June 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 June 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 19

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SPECIAL PROGRAMS OFFICE
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MCMR JA JOHN MORAN
U S ARMY MEDICAL RESEARCH & MATERIEL COM
504 SCOTT STREET
FORT DETRICK MD 21702-5012

In re Application of
Ulrich et al.
Application No. 08/882,431
Filed: June 25, 1997
Attorney Docket No. 003/037/SAP

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 5, 2000, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to reply properly to the final Office action mailed July 19, 1999, which set a period for reply of 3 months. Petitioners filed a two month extension of time with the required fee and an amendment after final on December 16, 1999. As explained in the January 14, 2000 Advisory Action, the December 16, 1999 amendment after final did not place this application in prima facie condition for allowance. Accordingly, this application became abandoned on December 20, 1999. A Notice of Abandonment was mailed on March 2, 2000.

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.

This application is being revived for purposes of continuity with the CPA filed May 5, 2000.

Pursuant to petitioners' authorization, Deposit Account No. 21-0380 was charged $690.00 for the utility filing fee for the CPA, $312.00 for the independent claims in excess of three, and $1,422.00 for the claims in excess of twenty.

The application file is being forwarded to Technology Center 1600 for processing the CPA and consideration of the Preliminary Amendment, filed May 5, 2000.

Telephone inquiries concerning this matter may be directed to E. Shirene Willis at (703) 308-6712.

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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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
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Paper No.

KENYON & KENYON
1500 K. STREET N.W. STE. 700
WASHINGTON, DC 20005

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FEB 22 2002

OFFICE OF PETITIONS

In re Application of :
Umesh J. Amin :
Application No. 08/882,804 : ON PETITION
Filed: June 26, 1997 :
Attorney Docket No. 062697 :

This is a decision on the petition, filed by facsimile transmission on February 22, 2002, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 15, 2002 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 the undersigned at (703) 305-8859.

The application is being forwarded to Technology Center AU 2683 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

---

[1] The request to apply the issue fee to the new Notice must be made in writing and should be accompanied by the new Issue Fee Transmittal Form PTOL-85(b), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due must be submitted. **Failure to *timely* request *in writing* that the previously paid issue fee be applied towards the new Notice and payment of any balance due will result in the abandonment of the application.**

3/4/02

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 25

Jonathan M. Harris
Conley, Rose & Tayon
P.O. Box 3267
Houston, TX 77253-3267

MAILED

APR 3 0 2004

Technology Center 2100

In re Application of:
Edward J. TARANTO et al.
Application No. 08/883,241
Filed: June 26, 1997
For: APPARATUS AND METHOD FOR FILTERING DOWNLOADED NETWORK FILES

DECISION ON PETITION UNDER 37 CFR §1.181 TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed 25 March 2004 under 37 CFR §1.181 to withdraw the holding of abandonment of the above-identified application.

This application was held abandoned for failure to respond in a timely manner to the decision by the Board of Patent Appeals and Interferences mailed 23 December 2003 (paper no. 22). A Notice of Abandonment was mailed 12 March 2004 (paper no. 23).

37 CFR 1.8(b) sets forth in relevant part that "[in] the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided without prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

...

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending units report confirming transmission may be used to support this statement."

The present petition does not include a statement from the party who transmitted the correspondence which attests on a personal knowledge basis to the previous timely mailing. Accordingly, the Petition is **DISMISSED**.

Any request for reconsideration must be filed within two months of the mailing date of this decision.

Any inquiry concerning this decision should be directed to Vincent N. Trans whose telephone number is (703) 305-9750.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
703-305-9750

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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MAIL

Paper No. 30

JUL 19 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BELL, BOYD & LLOYD, LLC
P. O. BOX 1135
CHICAGO IL 60690-1135

In re Application of
Ryoichi Shimizu
Application No. 08/883,322
Filed: June 26, 1997
For: **SELECTABLE RECORDING FRAME RATE VIDEO TAPE RECORDER**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a response to the petition to Withdraw the Holding of Abandonment, filed June 23, 2005 pursuant to 37 C.F.R. § 1.181. No fee is required.

This application became abandoned for failure to timely submit the issue fee due to the Notice of Allowance mailed February 11, 2005. A Notice of Abandonment has not yet been mailed.

Petitioner asserts that the Notice of Allowance mailed February 11, 2005was never received. In support therefore, Petitioner attests that the Office communication (Notice of Allowance) was not received at the correspondence address, and that a search of the contents of the file jacket and docket records reveal no evidence of receipt. Copies of the docket records have also been included to corroborate petitioner's claim.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioner has meet the requirements set forth above.

The petition is **GRANTED.**

Since it has been established that the Notice of Allowance was not received, it is presumed that Applicant also failed to receive the Notice of Allowability and examiner's amendment. The application file will be forwarded to the Technology Center's technical support staff for mailing of a new Notice of Allowance and Issue Fee Due, as well as a copy of the Notice of Allowability and the examiner's amendment. The three (3) month non-extendable time period for paying the issue fee will be set to run from the mailing date of the new Notices.

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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MAILED

JAN 25 2006

TECHNOLOGY CENTER 2100

James Kulbaski
Oblon, Spivak, McClelland, Maier, & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

In re Application of: Motoyama
Application No. 08/883,492
Attorney Docket No. 5244-054-2X
Filed: 06/26/1997
For: METHOD AND APPARATUS FOR DIAGNOSIS AND CONTROL OF BUSINESS OFFICE DEVICES USING AN INTERNET E-MAIL PROTOCOL

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 November 7, 2005, under 37 CFR 1.181 to compel consideration by the Examiner of the comments on statement of reasons for allowance.

The petition is **GRANTED**.

RECENT PROSECUTION HISTORY

(1) A (supplemental) Notice of Allowability and Notice of Allowance and Issue Fee(s) Due was mailed to Applicant on August 30, 2005. In addition, a Reasons for Allowance was included with the (supplemental) Notice of Allowability.

(2) On November 7, 2005, the instant petition was filed, along with Comments on the Reasons for Allowance, new Formal Drawings and payment of the Issue Fee due.

RELIEF REQUESTED

The instant petition under 37 CFR 1.181 requests the following relief:

(1) To compel consideration by the Examiner of the accompanying comments on statements of reasons for allowance.

ANALYSIS

M.P.E.P. §1302.14 states in part:

> **REASONS FOR ALLOWANCE**
> Thus, where the examiner's actions clearly point out the reasons for rejection and the applicant's reply explicitly present reasons why claims are patentable over the reference, the reasons for allowance are in all probability evident from the record and no statement should be necessary. Conversely, where the record is not explicit as to reasons, but allowance is in order, then a logical extension of 37 CFR 1.111 and 1.133 would dictate that the examiner should make reasons of record and such

> reasons should be specific. ***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. The examiner should keep in mind the possible misinterpretations of his or her statement that may be made and its possible * effects.***
>
> **APPLICANT'S COMMENTS ON THE REASONS FOR ALLOWANCE**
> The examiner's statement of reasons for allowance is an important source of prosecution file history. See Zenith Labs., Inc. v. Bristol-Myers Squibb Co., 19 F.3d 1418, 30 USPQ2d 1285 (Fed. Cir. 1996). ** >The examiner's statement of reasons for allowance is the personal opinion of the examiner as to why the claims are allowable. The examiner's statement should not create an estoppel. Only applicant's statements should create an estoppel. The failure of applicant to comment on the examiner's statement of reasons for allowance should not be treated as acquiescence to the examiner's statement. Any inferences or presumption are to be determined on a case-by-case basis by a court reviewing the patent, the USPTO examining the patent in a reissue application or a reexamination proceeding, the Board of Patent Appeals and Interferences reviewing the patent in an interference proceeding, etc.< ***Applicant may set forth his or her position if he or she disagrees with the examiner's reasons for allowance.***

In the instant petition, Applicant indicates that within the Reasons for Allowance, mailed on August 30, 2005, a statement by the Examiner that a limitation is being interpreted as requiring an "additional, separate step", is not required by the claim limitation explicitly set forth. Thus, Applicant contends that this inappropriately characterized the claims by placing an unwarranted interpretation of the claims on record in the instant application.

After reviewing the application file, the statement made in the Examiner's Reasons for Allowance of August 30, 2005 appears to be consistent with Applicant's statement i.e. the statement of "... limitation has been interpreted on its face, meaning that the method comprises [as] an additional step, ...", apparently places an unwarranted interpretation(s) on the claims, as discussed in MPEP §1302.14, set forth above.

CONCLUSION

Therefore, in an effort to clarify the application file record, the petition is **GRANTED**.

The application is being **FORWARDED** to the Examiner for appropriate action i.e. consideration and acknowledgment of the comments on Examiner's statement of Reasons for Allowance filed with the instant petition on November 7, 2005, and other action as deemed necessary by the Examiner.

Any questions regarding this decision should be directed to the individual below on (571) 272-3595.

Brian Johnson
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security

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

JUN 19 2001

Paper No. ~~43~~ 44

In re Application of :
Rene Langhans : DECISION ON PETITION
Application No. 08/883,685 :
Filed: June 27, 1997 :
Attorney Docket No. 2821-193

This is a decision on the petition filed on May 24, 2001 which requests supervisory review pursuant to 37 CFR 1.181. No fee is required for the petition, and a refund of the $130.00 tendered with the petition will be scheduled in due course.

The petition is dismissed without prejudice.

Petitioner requests review of the refusal of the examiner to enter an amendment to the specification, and certain amendments to the drawings. A review of the objections by the examiner and of the issues on appeal for resolution by the Board of Patent Appeals and Interferences ("Board") shows that the objections raised by the examiner from which petitioner seeks relief under 37 CFR 1.181 are intricately bound up with the issues for resolution by the Board. Accordingly, these issue will not be addressed until resolution of the appeal. Following the appeal, petitioner may renew the petition and may refer to the Decision by the Board in support of any arguments that the examiner's objections are improper.

This application is being remanded to the Supervisory Patent Examiner of Art Unit 3724 to consider the propriety of, and the appropriate disposition of, paper Nos. 40-42, in view of the fact that paper No. 39 is an Examiner's Answer. The record should be clarified to explain why a supplemental appeal brief was entered into the record after an Examiner's Answer was mailed, and whether it was proper to mail the Examiner's Answer prior to receiving a reply to the Notice of Defective Appeal Brief, paper No. 36. In addition, the Supervisor should request that the Head Supervisory Applications Examiner endorse the Request for Oral Hearing filed on May 24, 2001 into the record, and further request that the Head Supervisory Applications Examiner refund the $130.00 petition fee to deposit account No. 13-0235.

PETITION DISMISSED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

McCormick, Paulding & Huber
City Place II, 185 Asylum Street
Hartford, CT 06103-4102

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MCCORMICK, PAULDING & HUBER
CITYPLACE II, 185 ASYLUM STREET
HARTFORD CT 06103-4102

FAX RECEIVED
SEP 20 2004
OFFICE OF PETITIONS

CANCELLED

COPY MAILED
SEP 21 2004
OFFICE OF PETITIONS

In re Application of
Langhans
Application No. 08/883,685
Filed: June 7, 1997
For: ROTARY CUTTING UNIT

: Decision on Petition for
: Patent Term Extension

The above-identified application has been forwarded to the undersigned for consideration on the petition entitled "Petition to the Director," which was filed on May 12, 2004, which is being treated as a petition for patent term extension under 37 CFR 1.181.

The petition under 37 CFR 1.181 is dismissed.

Petitioner notes that the above identified application was filed on June 7, 1997, and was allowed on March 23, 2004. Petitioner argues that pursuant to 37 CFR 1.701(a)(3), the term of the patent should be extended for 1,183 days because issuance of the patent was delayed due to Appellate review by the Board of Patent Appeals and Interferences (Board). Petitioner argues that according to the Notice of Allowability the claims were determined to be allowable due to the decision by the Board. Petitioner states that the decision by the Board did not render the application allowable because the rejection of the claims under 35 U.S.C. § 112 based on the means plus function language in the claims was affirmed. Petitioner states that the § 112 rejection identified by the Board necessitated the filing of the RCE with an amendment to remove the language from the claims. Petitioner further argues that if the examiner had "identified" the "means-plus function language as the reason for the rejection of claims 1 and 18" under § 112, the objected to language could have been removed from the independent claims. Petitioner then argues that since the 102(b) rejection which prevented the allowance of Applicant's claims was overturned by the Board, and because the 112 rejection sustained by the Board could have been easily corrected without the appeal process, that Applicant is entitled to patent term extension pursuant to 37 CFR 1.701(a)(3).

35 U.S.C. § 154 provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for patent term adjustment for administrative delays in applications filed on or after May 29, 2000. The statute provides that a patent issued pursuant to a decision in

the review (by the Board of Patent Appeals and Interferences) reversing an adverse determination of patentability is eligible for patent term extension. The statute also provides that a patent shall not be eligible for patent term extension if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

37CFR 1.701(a)(3) Appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. §§ 141 or 145, if the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review.

While the above-identified application was filed after June 7, 1995, and was subject to an appeal before the Board, the claims were not allowed pursuant to a decision reversing an adverse decision of patentability. The examiner was affirmed in the decision by the Board mailed on November 6, 2003. To be eligible for patent term extension under 37 CFR 1.701(a)(3) all of the rejections of any one claim must ultimately be reversed.[1] Contrary to Petitioner's argument that the Examiner did not reject the claims with respect to the "means-plus function language" under 35 U.S.C. § 112, the examiner's rejection under 35 U.S.C. § 112 was affirmed by the Board. Furthermore, to be eligible for patent term extension, the statute requires that the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability and the examiner was affirmed. The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

Telephone inquiries with regard to this communication should be directed to the undersigned at (703) 308-8122.

Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Corrected Filing Receipt

[1]See Comment 137 in Changes To Implement 20-Year Patent Term and Provisional Applications, 60 FR 79 (April 25, 1995).

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. 5999903
Issue Date: December 7,1999
Application No. 08883723
Filed: June 27,1997
Attorney Docket No. 08342/008001

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

This is a decision on the electronic petition, filed December 5,2008 ,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 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)
5,999,903	1999-12-07	08/883,723	1997-06-27	14722-0022001

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	/Denis G. Maloney/	Date (YYYY-MM-DD)	2008-12-04
Name	Denis G. Maloney	Registration Number	29670

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. 6052663
Issue Date: April 18,2000
Application No. 08883724
Filed: June 27,1997
Attorney Docket No. 08342/005001

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

This is a decision on the electronic petition, filed December 5,2008 ,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 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)
6,052,663	2000-04-18	08/883,724	1997-06-27	14722-0019001

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	/Denis G. Maloney/	Date (YYYY-MM-DD)	2008-12-04
Name	Denis G. Maloney	Registration Number	29670

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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

2002

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago IL 60610

Paper No. 24

In re Application of	:	DECISION ON PETITION
Elizabeth G. Nabel et al	:	TO WITHDRAW
Serial No. : 08/884,352	:	HOLDING OF
Filed : June 27, 1997	:	ABANDONMENT
For : Methods for Coating Stents With DNA and Expression of Recombinant Genes from DNA Coated Stents In Vivo	:	

This is a decision on petitioner's requests filed January 8 and 9, 2002 and supplemented August 2, 2002, to review the holding of abandonment mailed October 22, 2001 for failure to respond to the Office action mailed February 7, 2001. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response and a copy of a PTO stamped receipt dated February 26, 2001.

In view of the above, the Notice of Abandonment mailed October 22, 2001 is in error and is hereby vacated. The holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response filed February 26, 2001.

Summary: Holding of Abandonment Withdrawn.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (703) 308-0873

ak/8/9/02

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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seyfarth.shaw
55 east monroe street
chicago, IL 60603

Mail Date: 07/02/2010

Applicant	: LOGAN L. PEASE	: DECISION ON REQUEST FOR
Patent Number	: 5770914	: RECALCULATION of PATENT
Issue Date	: 06/23/1998	: TERM ADJUSTMENT IN VIEW
Application No	: 08/884,428	: OF WYETH
Filed	: 06/27/1997	:
		:

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.

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

BRUCE J. CLARK
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AND BAKER, LLP
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TOPEKA, KS 66601-3555

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OFFICE OF PETITIONS

In re Application of
French, et al.
Application No. 08/884,546
Filed: June 27, 1997
Attorney Docket No. HYDROTHERAPY AND EXERCISE DEVICE WITH INTEGRATED LIFT AND TREADMILL MEANS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 22, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file corrected, formal drawings on or before March 15, 1999 as required by the Notice of Allowability mailed December 15, 1998. Accordingly, this application became abandoned on March 16, 1999.

A Notice of Allowability was mailed in the instant application on December 15, 1998. The Notice of Allowability set forth a shortened statutory period of three months from the mailing date of December 15, 1998 in which petitioner was required to submit new formal drawings. Extensions of time were permissible under the provisions of 37 CFR 1.136(a). Thus, the Notice of Allowability set forth a distinct requirement with which petitioner was required to comply. A Notice of Allowance was later mailed on February 2, 1999, and as such, the requested formal drawings were due before the issue fee (due May 3, 1999) and before the submission of the CPA on May 5, 1999.[1]

[1] It is noted that the issue fee was due on May 3, 1999, a Monday, and the CPA was filed on May 5, 1999 with a Certificate of Mailing under 37 CFR 1.8 dated May 3, 1999. However, a certificate of mailing cannot be used to obtain a filing date for a continued prosecution application under 37 CFR 1.53(d).

The above-identified application was erroneously allowed to continue prosecution on the filing of the CPA on May 5, 1999, without a petition to revive the application. However, that action does not negate the abandonment or the need for the filing of a petition to revive the above-identified application.

This application is being forwarded to Technology Center 3700 for review of the CPA filed April 30, 2002.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Conferee: Frances Hicks

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. 6033224
Issue Date: March 7,2000
Application No. 08884591
Filed: June 27,1997
Attorney Docket No. 08342/007001

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

This is a decision on the electronic petition, filed December 5,2008 ,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 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)
6,033,224	2000-03-07	08/884,591	1997-06-27	14722-0020001

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	/Denis G. Maloney/	Date (YYYY-MM-DD)	2008-12-04
Name	Denis G. Maloney	Registration Number	29670

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.

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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)
5,911,284	1999-06-15	08885377	1997-06-30	3301.14

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

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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 L. Waddell/	Date (YYYY-MM-DD)	2008-08-05
Name	Robert L. Waddell	Registration Number	35795

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. 5911284
Issue Date: June 15,1999
Application No. 08885377
Filed: June 30,1997
Attorney Docket No. PEGA-07

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

This is a decision on the electronic petition, filed August 5,2008 ,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 August 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 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)
5992314	1999-11-30	08/885,546	1997-06-30	7303

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	/AdamABennett/	Date (YYYY-MM-DD)	2008-12-16
Name	Adam A. Bennett	Registration Number	57849

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. 5992314
Issue Date: November 30,1999
Application No. 08885546
Filed: June 30,1997
Attorney Docket No. 7303

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

This is a decision on the electronic petition, filed December 16,2008 ,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 16,2008 . 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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FINNEGAN HENDERSON FARABOW GARRETT & DUNNER
901 NEW YORK AVE NW
WASHINGTON DC 20001-4413

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DEC 0 2 2005

OFFICE OF PETITIONS

In re Application	:	
Tang et al.	:	
Application No. 08/885,597	:	DECISION ON APPLICATION
Filed: June 30, 1997	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 06502.0023	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(b)" filed October 7, 2005. Applicants assert that the initial determination of patent term adjustment under 35 U.S.C. 154(b) of nine hundred seventy-five (975) days should be one thousand sixty-two (1062) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one thousand sixty-two (1062) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On July 7, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is nine hundred seventy-five (975) days. On October 7, 2005, Applicants timely[1] submitted an application for patent term adjustment, asserting that the patent term adjustment should be one thousand sixty-two (1062) days.

Applicants state that the application is not subject to a Terminal Disclaimer.

---

[1] Applicants paid the issue fee on October 7, 2005.

The Office initially determined a patent term adjustment of nine hundred seventy-five (975) days based on an adjustment for PTO delay of one thousand thirty-two (1032) days pursuant to 35 U.S.C. 154(b)(1)(C)(iii) and 37 C.F.R. § 1.703(e), reduced by applicants' delays of twenty-one (21) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b) and thirty-six (36) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). Applicants' delay of 36 days has been reviewed and found to be correct. The adjustments of 1032 and 21 days are at issue.

The adjustment of 1032 days has been found to be incorrect. A review of the application file reveals that a Notice of Appeal was filed on June 28, 2001. A decision by the Board of Patent Appeals and Interferences, in favor of Applicants, was mailed on May 24, 2004, not April 24, 2004 as indicated in PAIR. 37 C.F.R. § 1.704(e) states that the period of adjustment is the number of days "beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C 134 and § 1.191 and ending on the date a final decision in favor of the Applicant by the Board of Patent Appeals and Interferences...." Accordingly, the PTO should have determined an adjustment of one thousand sixty-two (1062) days.

In addition, the adjustment of 21 days has been found to be incorrect. The Office mailed a final Office action on March 7, 2001. On March 28, 2001, the Office mailed a non-final Office action, withdrawing the finality of the prior Office action. On June 28, 2001, Applicants timely filed a Notice of Appeal, and were erroneously assessed 21 days of applicant delay. Applicant delay with respect to this filing should have been zero (0) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one thousand twenty-six (1026) days** (1062 days of PTO delay, reduced by 36 days of applicant delay), subject to any terminal disclaimer.

Receipt of the $200.00 fee set forth in 37 C.F.R. § 1.18(e) is acknowledged.

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

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Kery A. Fries

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: 8/23/05

meb
Paper Number: _____

In re application of
Brinati, et al :

Serial No. 08/885,770 : DECISION ON
Filed: June 30, 1997 : PETITION
For: VDF Polymerization Process :

This is a response to the PETITION UNDER 37 C.F.R. 1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT, filed December 2, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of March 29, 1999 for failure to timely respond to the Office Action mailed August 20, 1998, be withdrawn. The petitioner asserts that the applicant timely responded to the Office Action on January 13, 1999 and has provided a copy of the stamped postcard receipt as evidence.

DECISION

The instant request is accepted as a petition under 37 C.F.R. 1.181 (no fee). A review of the petitioner's evidence provided with the instant petition and the application papers indicates that the request does have merit.

However, it is noted that MPEP 711.03 (c) I states:

37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 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).

In this case the Notice of Abandonment was mailed March 29, 1999. Since the applicants have not timely sought status information regarding this application and applicant's request to withdraw the holding of abandonment was not filed until December 2, 2004, more than 5 years after the date of the Notice of Abandonment, the request is untimely.

The Petition is **DISMISSED**, as untimely.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

RICHARD J. BERMAN
ARENT FOW PLLC
1050 CONNECTICUT AVE, N.W.
WASHINGTON, DC 20036-5339

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Mailed: 2/8/06

In re application of	:	
Brinati et al.	:	DECISION ON
Serial No. 08/885,770	:	PETITION
Filed: June 30, 1997	:	
For: VDF POLYMERIZATION PROCESS		

This is a decision on the REQUEST FOR RECONSIDERATION of the petition decision mailed August 23, 2005.

Petitioner is requesting reconsideration of the petition decision mailed August 23, 2005 dismissing the originally filed petition of December 2, 2004 requesting the withdrawal of abandonment.

On March 31, 2003, a non-final office action was mailed to Applicants. The office action contained numerous rejections and objections to the specification based on new matter and claim interpretation. Petitioner argues that the instant specification provides support for all of the subject matter presented by Applicants and that the examiner is interpreting the instant claims too narrowly.

On June 23, 2003 the instant petition under 37 CFR 1.181 was filed did not become aware of the notice of abandonment until just prior to December 2, 2004, the date of filing of the petition. It is also argued that the notice of abandonment was improperly issued due to the timely filing of a CPA request. These arguments are persuasive and the request for reconsideration is **GRANTED.**

The request for withdrawal of the abandonment is also **GRANTED** and the Continued Prosecution Application will be processed. The application is being forwarded to the examiner to take appropriate action.

MStone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

NIKAIDO, MARMELSTEIN, MURRAY & ORAM LLP
METROPOLITAN SQUARE
655 15TH ST NW
STE 330-G ST LOBBY
WASHINGTON DC 20005-0501

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NIKAIDO, MARMELSTEIN, MURRAY & ORAM LLP
METROPOLITAN SQUARE
655 15TH ST NW
STE 330-G ST LOBBY
WASHINGTON DC 20005-0501

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OFFICE OF PETITIONS

In re Application of :
Giulio Brinati et al. :
Application No. 08/885,770 : DECISION ON PETITION
Filed: June 30, 1997 :
Attorney Docket No: JAP-70453 :

This is a decision on the petition filed in the alternative under 37 CFR 1.137(b), on September 14, 2005, to revive the above-identified application.

The petition filed December 2, 2005 was in response to a decision dismissing a petition to withdraw the holding of abandonment. The petition seeking reconsideration of that decision alternatively sought revival of the abandoned application if the abandonment could not be withdrawn.

In view of Technology Center 1713 advising that the request for reconsideration has been granted, there is no need to treat the petition alternatively under 37 CFR 1.137(b) and thus is **DISMISSED** as involving moot issues. The petition fee in the amount of $1500.00 will be credited back to deposit account no. 01-2300.

Additionally, there is no indication that petitioner herein was ever empowered to prosecute the instant application. If petitioner desires to receive future correspondence regarding this application, 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.

This matter is being referred to Technology Center 1713 for continued examination in due course.

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

cc:

RICHARD BERMAN
ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON, DC 20036

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. 5993590
Issue Date: November 30,1999
Application No. 08886314
Filed: July 1,1997
Attorney Docket No. 0605794.0010

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

This is a decision on the electronic petition, filed January 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 January 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 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)
5,993,590	1999-11-30	08/886,314	1997-07-01	0605794-0010

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	/Safet Metjahic/	Date (YYYY-MM-DD)	2008-01-11
Name	Safet Metjahic	Registration Number	58677

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.

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)
5,998,700	1999-12-07	08886640	1997-07-01	052001-126910

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	/Ari M. Bai/	Date (YYYY-MM-DD)	2008-07-10
Name	Ari M. Bai	Registration Number	38726

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. 5998700
Issue Date: December 7,1999
Application No. 08886640
Filed: July 1,1997
Attorney Docket No. 10253USB

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

This is a decision on the electronic petition, filed July 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 July 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 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
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In re Patent No. 6212359
Issue Date: April 3,2001
Application No. 08886951
Filed: July 2,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed February 21,2007 ,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 February 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)
6,212,359	2001-04-03	08/886,951	1997-07-02	11CK-121923(77603-100P01)

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	/s/	Date (YYYY-MM-DD)	2007-02-21
Name	David E. Heisey	Registration Number	42651

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.

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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.

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
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Paper No. 46

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CINCINNATI OH 45202

MAIL

FEB - 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
H. Lee MARTIN, et al.
Application No. 08/887,319
Filed: July 2, 1997
For: OMNIVIEW MOTIONLESS CAMERA ORIENTATION SYSTEM

ON PETITION

This is a decision on the September 15, 2003 petition under 37 CFR 1.181 to withdraw the holding of abandonment. The petition is being treated under 37 CFR 1.8(b).

*The petition is **granted**.*

This application became abandoned for failure to timely file a response to the November 26, 2002 Office action, which set a shortened statutory period of two (2) months to reply. That period lapsed without reply, rendering this application abandoned as of January 27, 2003. A Notice of Abandonment was mailed on July 16, 2003.

Petitioner alleges to have timely filed an amendment in response to the Office action. To support this position, Petitioner has included with this petition a copy of the reply, which consisted of an amendment. The amendment included with the petition includes a proper certificate of mailing under 37 CFR 1.8(a).

37 C.F.R. § 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition meets the requirements set forth above. Accordingly, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application will be forwarded to the Technology Center's technical support staff for entry of the amendment. From there, the file will be forwarded to the examiner for consideration in due course.

Allen MacDonald

Allen R. MacDonald, Director
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
www.uspto.gov
DIW Nov-08

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

COPY MAILED
NOV 13 2008
OFFICE OF PETITIONS

In re Patent No. 5930758 :
Issue Date: 07/27/1999 :
Application Number: 08/887417 : ON PETITION
Filing Date: 07/02/1997 :
Attorney Docket Number: :
277882US6DIV :

This is a decision on the "PETITION UNDER 37 C.F.R. §1.181(A)(2)," filed on June 23, 2008, which is treated as a petition under 37 CFR 1.182, and 37 CFR 1.183, requesting that a a terminal disclaimer recorded in prior-filed Application No. 07/600,818, filed on October 22, 1990, which issued as U.S. Patent No. 5,640,458, on June 17, 1997, be withdrawn or nullified with regard its effect on the term of instant patent.

The petition is **dismissed**.

Petitioner requests that the Director nullify any effect of the terminal disclaimer filed on June 13, 1994, in the above-referenced, prior-filed application, No. 07/600,818 (hereinafter "the '818 application") on the subject patent, No. 5,930,758 (hereinafter "the '758 patent"), which issued from Application No. 08/887,417 (hereinafter "the '417 application").

It is noted that petitioner states:

> Initially, Patentee respectfully request that 37 C.F.R. § 1.182(f) be suspended. Rule 182(f) indicates that a petition not filed within two months of the action or notice from which relief is sought may be dismissed as untimely. However, under 37 C.F.R. § 1.183, the Director, or the Director's designee, may suspend or waive a Rule in the event of extraordinary circumstances or when justice requires. Patentee submits that the present situation is such a case.

Petitioner's argument has been, considered, but is not persuasive.

Preliminarily, it is noted that MPEP 1490 states

> While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "un-happy circumstance" in In re Jentoft, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed **before the patent issues**. Since the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than by refiling it as a CPA).
>
> The mechanisms to correct a patent – Certificate of Correction (35 U.S.C. 255), reissue (35 U.S.C. 251), and reexamination (35 U.S.C. 305) – are **not** available to withdraw or otherwise nullify the effect of a recorded terminal disclaimer. **As a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public**, particularly where the public interest is not protected in some manner – e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935).
>
> (emphasis added)

As such, petitioner must show why the terminal disclaimer filed in the '818 application, to which the subject application claims benefit under 35 U.S.C. § 120, should not be given full effect in the '758 patent which issued from the '417 application.

At the outset, a decision is being issued in Patent No. 5,640,458 (hereinafter "the '458 patent"), concerning the petition to withdraw the terminal disclaimer. The reasons why the terminal disclaimer will not be withdrawn or nullified in the '818 application have been explained in the decision issued in the '458 patent. As such, the sole issue at hand is whether the

effect of the terminal disclaimer filed in the '818 application can be nullified or withdrawn with regard to the '758 patent, which issued from the '417 application, an application claiming benefit under 35 U.S.C. § 120 to the '818 application.

The terminal disclaimer filed on June 13, 1994, in the '818 application states that petitioner "hereby disclaims the terminal twenty-six (26) months of any patent granted on said Application Serial No. 07/600,818 or on any application which is entitled to the benefit of the filing date of said Application No. Serial No. 07/600,818 under 35 U.S.C. 120."

Accordingly, in claiming the benefit under 35 U.S.C. 120 of the '818 application in the '417 application, petitioner acquiesced to any and all limitations on the patent term of any patent issuing from the '417 application, as imposed by the terminal disclaimer filed in the '818 application.

As stated above, as a general principle, public policy does not favor the restoration to the patent owner of something that has been freely dedicated to the public, particularly where the public interest is not protected in some manner – e.g., intervening rights in the case of a reissue patent. See, e.g., Altoona Publix Theatres v. American Tri-Ergon Corp., 294 U.S. 477, 24 USPQ 308 (1935).

As discussed in the decision on petition in the '458 patent, the balance of equities does not merit the Director overruling the well-settled public policy precluding restoration to the patent owner of something that has been freely dedicated to the public in favor of correcting, after issuance of the patent and an extended period of delay. The showing of record is that petitioner did not file the petition to withdraw the terminal disclaimer in the '818 application until an extended period after the '458 patent had issued, and has not provided an adequate explanation of neither the delay in filing the petition, nor a sufficient reason why the Director should grant the requested relief under 37 CFR 1.182.

Further, considered under 37 CFR 1.183, petitioner's argument is not well taken. As stated previously, 37 CFR 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition

of the interested party, subject to such other requirements as may be imposed.

The facts presented on the record do not establish an extraordinary situation. Petitioners have not established any special circumstances or equities that would require suspension of the rules in the interests of justice. It is noted that petitioner has not identified a particular rule the waiver of which would provide the relief requested.

Lastly, 35 U.S.C. § 120 states that an application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application. Accordingly, to the extent that the term of the '458 patent is limited by the terminal disclaimer filed in the '818 application, and the subject patent claims benefit of the '818 application under 35 U.S.C. 120, the claim of benefit is statutory. Accordingly, the USPTO simply lacks the authority or discretion to relax any requirement of law. See Baxter Int'l, Inc. v. McGaw, Inc., 149 F.3d 1321, 1334, 47 USPQ2d 1225, 1234-1235 (Fed. Cir. 1998)(the PTO cannot, by rule, or waiver of the rules, fashion a remedy that contravenes 35 U.S.C. §§ 112, 120); A. F. Stoddard v. Dann, 564 F.2d 556, 566, 195 USPQ 97, 105 (D.C. Cir 1977), (since the USPTO is an executive branch agency, it must follow the strict provisions of the applicable statute).

As such, to the extent that the '458 patent which issued from the '818 application, to which the subject application claims benefit under 35 U.S.C. 120, is subject to the terminal disclaimer at issue, any patent which issued from an continuing application filed under 35 U.S.C. 120, which claims the benefit of the '818 application, is, by statute, subject to all of the limitations which apply to the '818 application, the '458 patent, and any applications for patent claiming benefit under 35 U.S.C. § 120 thereto.

Accordingly, the petition is **dismissed**.

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

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

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

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

Telephone inquires should be directed to the undersigned at 571.272.3231.

D Wood

Douglas Wood
Senior Petitions Attorney
Office of Petitions

Conferee: Anthony Knight, Supervisor

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)
5899609	1999-05-04	08887743	1997-07-03	AESP0004USA

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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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	/WINSTON HSU/	Date (YYYY-MM-DD)	2007-11-29
Name	WINSTON HSU	Registration Number	41526

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
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Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 5899609
Issue Date: May 4,1999
Application No. 08887743
Filed: July 3,1997
Attorney Docket No. AET-97-002

:
: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)
6046527	2000-04-04	08887811	1997-07-03	HNY-P6

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

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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	/glenn f ostrager/	Date (YYYY-MM-DD)	2008-06-19
Name	Glenn F. Ostrager	Registration Number	29963

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. 6046527
Issue Date: April 4,2000
Application No. 08887811
Filed: July 3,1997
Attorney Docket No. HNY-P6

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

In re Patent No. 6008925
Issue Date: December 28,1999
Application No. 08887947
Filed: July 3,1997
Attorney Docket No. 1479400024

:
: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 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 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.

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)
6,008,925	1999-12-28	08/887,947	1997-07-03	18994-051001

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	/Bing Ai/	Date (YYYY-MM-DD)	2008-06-12
Name	Bing Ai	Registration Number	43312

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.

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)
6091070	2000-07-18	08887957	1997-07-03	Digirad6091070

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	/Scott C Harris/	Date (YYYY-MM-DD)	2008-10-25
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.**

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The information provided by you in this form will be subject to the following routine uses:

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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
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In re Patent No. 6091070
Issue Date: July 18,2000
Application No. 08887957
Filed: July 3,1997
Attorney Docket No. 07402017002

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

This is a decision on the electronic petition, filed October 25,2008 ,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 October 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
PO Box 1450
Arlington, VA 22313-1450
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Paper No. 41

Julio L. Pimentel
3206 Windgate Drive
Buford, GA 30519

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JUL 0 2 2003

OFFICE OF PETITIONS

In re Application of :
Julioi L. Pimentel :
Application No. 08/888,202 :
Filed: July 7, 1997 :
Attorney Docket No. n/a :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 7, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

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 August 6, 2002, 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 November 7, 2002.

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) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lack(s) item(s) (1).

As to item (1), this application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 6, 2002. 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.

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

By mail: Mail Stop Petitions
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 Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: "Courtesy Copy of Advisory Action"

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. 47

Hinkle & O'Bradovich, LLC
395 Scenic Highway
Lawrenceville, GA 30045

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OCT 15 2003

OFFICE OF PETITIONS

In re Application of :
Julio L. Pimentel :
Application No. 08/888,202 : ON PETITION
Filed: July 7, 1997 :
Attorney Docket No. n/a :

This is a decision on the renewed petition under 37 CFR 1.137(b) filed September 30, 2003, to revive the above-identified application.

The petition is granted.

Telephone inquiries regarding this decision should be directed to Latrice Bond at (703) 308-6911.

The application file is being forwarded to Technology Center AU 1642 for processing the Request for Continued Examination pursuant to 37 CFR 1.114 filed with the instant petition.

Latrice Bond

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
Washington, D.C. 20231
www.uspto.gov

Paper No. 37

THE PATENT GROUP
FOLEY HOAG & ELIOT LLP
ONE POST OFFICE SQUARE
BOSTON MA 02109

COPY MAILED

JUL 0 3 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Paul Colin Barson :
Application No. 08/888,361 :
Filed: July 3, 1997 :
Attorney Docket No. CEO-004.01 :

This is a decision on the petition, filed July 2, 2002, 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 June 5, 2002 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]

It is noted that the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

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[1] The request to apply the issue fee to the new Notice must be made in writing and should be accompanied by the new Issue Fee Transmittal Form PTOL-85(b), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due must be submitted. **Failure to *timely* request *in writing* that the previously paid issue fee be applied towards the new Notice and payment of any balance due will result in the abandonment of the application.**

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

The application is being forwarded to Technology Center AU 2122 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed amendment.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Patent Group
Foley Hoag Llp
155 Seaport Blvd.
Boston, MA 02210

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. 17

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

TODD E ZENGER
KIRTON & MCCONKIE
1800 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
SALT LAKE CITY, UT 84111

In re Application of
Edward Jackson
Application No. 08/888,376
Filed: July 7, 1997
Attorney Docket No. 7045.0002

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 18, 2000, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely submit (a) the issue fee, as required by the Notice of Allowance and Issue Fee Due, and (b) new Formal Drawings as required by the Notice of Allowability, both mailed on January 24, 2000. A shortened statutory period of three (3) months was set for replying to the notice of allowability. The period for replying to a notice of allowance and issue fee due 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 reply to both notices as of April 25, 2000.[3]

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of the continued prosecution application (CPA), filed May 18, 2000.

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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.

This application is being forwarded to Technology Center 1700 for processing the CPA.

As petitioner is aware, the filing of a CPA is an express abandonment of the parent application.

Although the issue fee is not refundable, Petitioner may request a refund of the $15.00 fee for patent copies by writing to the Office of Finance, Refund Section. A copy of this decision should accompany Petitioner's request. If Petitioner does not request a refund at this time, the $15.00 may be credited toward patent copies should the CPA issue.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Nelson B. Snyder III at (703) 305-0011.

Christina L. Tartera for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Assistant 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, DC 20231
www.uspto.gov

JUN 28 2001

In re Application of
Edward Jackson
Serial No. 08/888376
Filed: July 7, 1997
For: OPEN SYSTEM SULFUROUS ACID GENERATOR

DECISION ON PETITION

This is in response to the petition filed April 4, 2001, requesting that the above-identified application be granted Special Status under Section 708.02 (V) of the MPEP.

The petition has been considered and found to comply with the requirements set forth under the above-noted section. Accordingly the petition is granted.

Richard V. Fisher, Director
Technical Center 1700
Chemical and Materials Engineering

Kirton & McConkie
1800 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111

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. 6110703
Issue Date: August 29,2000
Application No. 08888381
Filed: July 7,1997
Attorney Docket No. 4840.200US

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

This is a decision on the electronic petition, filed September 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 September 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)
6110703	2000-08-29	08888381	1997-07-07	4840.200-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	/Reza Green, Reg. NO. 38,475/	Date (YYYY-MM-DD)	2008-09-02
Name	Reza Green	Registration Number	38475

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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PEPPER HAMILTON LLP
3000 TWO LOGAN SQUARE
18TH AND ARCH STREETS
PHILADELPHIA PA 19103

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JUL 30 2008

OFFICE OF PETITIONS

In re Patent No. 5,788,178	:	
Issue Date: August 4, 1998	:	SUPPLEMENTAL
Application No. 08/888,425	:	DECISION ON PETITION
Filed: July 7, 1997	:	
Attorney Docket No. RBAR0001-100	:	
	:	

This is in response to the paper titled "COMMUNICATION", filed June 26, 2008.

A petition to accept the unavoidably delayed payment of the first maintenance fee was granted in a decision mailed on April 9, 2007. The first maintenance fee was accepted and the patent was reinstated. However, between the filing of the first petition on July 8, 2005 and the April 9, 2007 decision, the window for the second maintenance fee opened and closed. The decision did not charge the second maintenance fee, despite an authorization from petitioner.

The second maintenance fee of $1,180 has been charged to Deposit Account No. 50-0436, as authorized.

The one year window for payment of the third maintenance fee will open on August 4, 2009.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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PEPPER HAMILTON LLP
3000 TWO LOGAN SQUARE
18TH AND ARCH STREETS
PHILADELPHIA PA 19103

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JUL 30 2008

OFFICE OF PETITIONS

In re Patent No. 5,788,178 :
Issue Date: August 4, 1998 : SUPPLEMENTAL
Application No. 08/888,425 : DECISION ON PETITION
Filed: July 7, 1997 :
Attorney Docket No. RBAR0001-100 :
:

This is in response to the paper titled "COMMUNICATION", filed June 26, 2008.

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Cliff Congo
Petitions Attorney
Office of Petitions

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Paper No. 15

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PHILADELPHIA PA 19103-3508

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COZEN IP DEPT.

FEB 13 2006

DUE DATE 4-9-06
MAX DATE
DOCKETED BY A.T

In re Patent No. 5,788,178 :
Issue Date: August 4, 1998 :
Application No. 08/888,425 : DECISION ON PETITION
Filed: July 7, 1997 :
Attorney Docket No. RBAR0001-100 :
:

This is a decision on the petition under 37 CFR 1.378(b), filed July 8, 2005, to accept the unavoidably delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

Procedural History:

- The above-identified patent issued on August 4, 1998.
- The first maintenance fee could have been timely paid during the period from August 4, 2001 through February 4, 2002, or with a late payment surcharge during the period from February 5, 2002 through August 4, 2002.

- No maintenance fee was received, and as such, the patent expired on August 5, 2002.
- The 2 year time period for filing a petition under 37 C.F.R. § 1.378(c) expired on August 5, 2004.

Evidence Presented on Petition:

A review of the petition reveal the following events giving arise to petitioner's assertion of unavoidable delay. Shortly after issuance of the instant patent, patentee Mr. Rolin F. Barrett, Jr., through his law firm the Mills Law Firm, sent a letter with a copy of the patent to Dr. Ronald M. Barrett at Auburn University, to put him on notice of the patent. Almost three years later, during the period for payment of the first maintenance fee in the above patent, the Mills Law Firm sent a reminder letter. However, because the last correspondence address used in the patent was the letter to Dr. Ronald M. Barrett, the reminder letter was mistakenly sent to that address. The reminder letter should have been sent to the patentee, Mr. Rolin F. Barrett. A second reminder was also sent to Dr. Ronald M. Barrett, and finally, the expiration letter. At no point did Dr. Ronald M. Barrett let the Mills Law Firm know that the reminder letters and expiration letter were sent to him erroneously. It was not until patentee engaged another law firm to file a reissue application that the expiration of the instant patent was eventually discovered.

Relevant Statutes, Rules and Regulations:

35 U.S.C. § 41(c)(1) states that:

> The Director may accept the payment of any maintenance fee required by subsection (b) of this section which is made within twenty-four months after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional, or at any time after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unavoidable. The Director may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

37 C.F.R. § 1.378(b) provides that:

> Any petition to accept an unavoidably delayed payment of a maintenance fee 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.

Opinion:

§ 1.378(b)(3) is at issue in this case. 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, delay resulting from the lack of knowledge or improper application of the patent statutes, rules of practice or the Manual of Patent Examining Procedure, however, does not constitute "unavoidable" delay. See id.; Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

While the delay in payment of the maintenance fee may have been unintentional, petitioner has failed to provide an adequate showing that the delay was unavoidable. Rather, the delay is one that could have been avoided with the reasonable exercise of due care. Petitioner is bound by any errors or negligence that may have been committed by his voluntarily chosen counsel. See Link v. Wabash, 370 U.S. 626, 633-34 (1962).

Moreover, patentee argues that had the reminder letters from the Mills Law Firm reached him, he obviously would have paid the maintenance fee, as witnessed by the most spent in prosecuting the reissue application. However, patentee's argument is unpersuasive. The standard is not whether petitioner intended to pay the maintenance fee, but rather, whether the delay in paying the maintenance fee was unavoidable. The "unavoidable" delay standard required a showing of the steps taken to ensure the timely payment of the maintenance fee. The fact that petitioner filed a reissue application, while potentially probative of whether a delay was unintentional, is simply not probative of whether the delay was unavoidable. See In re Patent No. 4,409,763, at 1800.

Conclusion:

Any request for reconsideration of this decision must be filed within **TWO MONTHS** of the mailing date of this decision. Any such petition for reconsideration must be accompanied by the $130 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. Accordingly, on request for reconsideration, it is extremely important that petitioner supply **any** and **all** relevant information and documentation in order to meet his burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

As petitioner has not presented a grantable petition, the maintenance fee and the surcharge have not been charged. The $130 submitted with the petition has been refunded to Deposit Account No. 50-1275.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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PATENT ADMINISTRATOR
THE LUBRIZOL CORPORATION
29400 LAKELAND BOULEVARD
WICKLIFFE, OH 44092-2298

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APR 2 1 2004

OFFICE OF PETITIONS

In re Application of
Curtis R. Scharf et al
Application No. 08/888,462
Filed: July 7, 1997
Attorney Docket No. 2730-01

: DECISION GRANTING PETITION
: UNDER 37 CFR 313(c)(2)

This is a decision on the petition, filed April 12, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 5, 2004 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 the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 1764 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
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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PATENT ADMINISTRATOR
THE LUBRIZOL CORPORATION
29400 LAKELAND BOULEVARD
WICKLIFFE, OH 44092-2298

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MAY 0 2 2005

OFFICE OF PETITIONS

In re Application of :
Curtis R. Scharf et al :
Application No. 08/888,462 : DECISION GRANTING PETITION
Filed: July 7, 1997 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 2730-01 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 9, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned, by operation of law, for failure to timely pay the issue fee on or before December 3, 2004, as required by the Notice of Allowance and Fee(s) Due, mailed September 3, 2004.

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

The statement of unintentional delay was not signed by an attorney of record in the instant file. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the entire delay was in fact unintentional, petitioner should make a reasonable inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

If petitioner herein 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 petitioner, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

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

This matter is being referred to Publishing Division for processing into a patent.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:

Thomas W. Adams
Renner Otto Boisselle & Sklar LLP
1621 Euclid Avenue, Nineteenth floor
Cleveland, Ohio 44115

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. 5835322
Issue Date: November 10,1998
Application No. 08888783
Filed: July 7,1997
Attorney Docket No. ESI-4A

:
: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)
5835322	1998-11-10	08888783	1997-07-07	ESI-4A

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	/Leonard Tachner/	Date (YYYY-MM-DD)	2008-05-13
Name	Leonard Tachner	Registration Number	26344

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. 5975027
Issue Date: November 2,1999
Application No. 08889123
Filed: July 7,1997
Attorney Docket No. 1699.007

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

This is a decision on the electronic petition, filed March 7,2008 ,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 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)
5975027	1999-11-02	08889123	1997-07-07	1699.007

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	/wpg/	Date (YYYY-MM-DD)	2008-03-07
Name	William P. Glenn, Jr.	Registration Number	36526

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.

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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)).

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
www.uspto.gov

Paul J. Lerner
Montebello Park
75 Montebello Road
Suffern, NY 10901

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MAR 14 2005

OFFICE OF PETITIONS

In re Patent No. 5,960,067
Issue Date: September 28, 1999
Application No. 08/889,776
Filed: July 8, 1997
Attorney Docket No. N/A

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed by facsimile transmission on January 28, 2005[1], to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued September 28, 1999. Accordingly, the first maintenance fee due could have been paid during the period from September 28, 2002 through March 28, 2003, or with a surcharge during the period from March 29, 2003 through September 28, 2003. This patent expired on September 29, 2003. Since this petition was submitted 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.

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 patent. However, in accordance with 37 CFR 1.34(a), the signature of Paul Lerner appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if Mr. Lerner desires to receive future correspondence regarding this patent, an appropriate power of attorney or authorization of agent and "Fee Address" form (see PTO/SB/47) must be submitted.

[1] The petition was originally filed via certificate of mailing on October 26, 2004.

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) 272-3223.

The patent file is being forwarded to Files Repository.

Marianne E. Jenkins
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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.
08/889,776	07/08/1997	WILLIAM K. RICEMAN	5957-83301	3853

35690 7590 01/28/2008

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398

EXAMINER	
RAMAKRISHNAIAH, MELUR	

ART UNIT	PAPER NUMBER
2743	

MAIL DATE	DELIVERY MODE
01/28/2008	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 DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
08889776	7/8/1997	RICEMAN ET AL.	5957-83301

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398

EXAMINER
Melur Ramakrishnaiah

ART UNIT	PAPER
2614	20080104

DATE MAILED:

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

Commissioner for Patents

Melur Ramakrishnaiah
Primary Examiner
Art Unit: 2614

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. RICEMAN ET AL.
Issue Date: September 28, 1999
Appl No.: 08/889,776
Filed: July 08, 1997
For: Apparatus and Method for parellel transmission of data over a telephone line

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed June 7, 2007 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. The inventors are as follows:

William K Riceman
Stephen A Hollock
Robert G Riceman

Curtis Kuntz
Supervisory Patent Examiner
Art Unit 2614
Technology Center 2600

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.
P.O. BOX 398
AUSTIN, TX 78767-0398

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. 5755441
Issue Date: May 26,1998
Application No. 08890021
Filed: July 10,1997
Attorney Docket No. SIE-154

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

This is a decision on the electronic petition, filed July 30,2010 ,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 30,2010 . 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)
5,755,441	1998-05-26	08/890,021	1997-07-10	SIE-154

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 Levy/	Date (YYYY-MM-DD)	2010-07-30
Name	Mark Levy	Registration Number	29188

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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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)
6,077,081	2000-06-20	08/890,759	1997-07-11	

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
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◯	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	/Jeffrey M. Weinick/	Date (YYYY-MM-DD)	2009-06-24
Name	Jeffrey M. Weinick	Registration Number	36304

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. 6077081
Issue Date: June 20,2000
Application No. 08890759
Filed: July 11,1997
Attorney Docket No. 283301

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

This is a decision on the electronic petition, filed June 24,2009 ,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 June 24,2009 . 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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ALEXANDRIA, VA 22313-1450
www.uspto.gov

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

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OCT 2 6 2006

OFFICE OF PETITIONS

In re Application of
Chauvel et al.
U.S. Patent No.: 7,028,145
Issue Date: April 11, 2006
Application No. 08/890,894
Filed: July 10, 1997
Attorney Docket No. TIF-15767A
For: Protocol Processor Intended For The Execution Of A Collection Of Instructions In A Reduced Number Of Operations

: Decision on Petition for
: Patent Term Extension

The above-identified application has been forwarded to the undersigned for consideration on the "Petition For Extension Of Patent Term Due To Examination Delay - 37 CFR 1.181," which was received on April 17, 2006, for the above-identified application. See 35 U.S.C. § 154(b) and 37 CFR 1.701.

The petition is dismissed.

Petitioner notes that the above-identified application was filed on July 10, 1997, a Notice of Appeal was filed on October 7, 2002 and the Board of Patent Appeals and Interferences (BPAI) remanded the application to the Examiner on August 10, 2004. Petitioner argues that first and second Notice of Allowance and Issue Fees mailed on June 1, 2005 and October 11, 2005, both improperly failed to include a patent term extension of 769 days.

Petitioner states that the application was filed after June 8, 1995 but before May 29, 2000 and that the present application is not subject to a terminal disclaimer, thus the patent is entitled to patent term extension. Petitioner asserts that had the BPAI not remanded the application to the Examiner, the BPAI would have reversed the Examiner entitling the application to patent term extension. Petitioner asserts that the application should be entitled to 769 day of patent term extension.

35 U.S.C. 154. Contents and term of patent (in effect on June 8, 1995)
***

(b) TERM EXTENSION.-

(1) INTERFERENCE DELAY OR SECRECY ORDERS.-If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title, or because the application for patent is

placed under an order pursuant to section 181 of this title, the term of the patent shall be extended for the period of delay, but in no case more than 5 years.
(2) EXTENSION FOR APPELLATE REVIEW.-If the issue of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years. A patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000. 35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The above-identified application was filed on July 10, 1997, which is after June 8, 1995 and before May 29, 2000, and, as a result is an application that may be eligible for patent term extension under 35 U.S.C. § 154. While the application was issued pursuant to a remand by the BPAI, the application is subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct.

While Petitioner states, "the present application is not subject to a terminal disclaimer," Petitioner, Ronald O. Neerings on June 30, 2000, filed a terminal disclaimer. The terminal disclaimer states that it was filed to obviate a double patenting rejection, listed the prior U.S. Patent No, was signed by a proper party, authorized payment of the fee and the fee was charged. The terminal disclaimer was filed in response to two double patenting rejections made in the final rejection mailed on January 19, 2000. The double patenting rejections was withdrawn by the examiner in response to the terminal disclaimer in the Advisory Action mailed on July 28, 2000. While the terminal disclaimer, previously submitted by Petitioner, was not fully treated by the Office, the terminal disclaimer was matched with the above-identified application, the fee was charged, and the Examiner withdrew the double patenting rejection in response to the terminal disclaimer. Since the disclaimer was filed and complied with the meaning of § 253, and since nothing in the statutes or regulations requires treatment or any further action by the Office, the disclaimer was effective when filed and the patent issued. See *Vectra Fitness Inc. v. TNWK Corp.*, 49 USPQ2d 1144 (Fed. Cir. 1998). The terminal disclaimer has now been more completely treated by the Office, however this does not affect its earlier effectiveness.

Under 37 CFR 1.701(a)(3), the patent is not entitled to patent term extension because the patent is subject to a "terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct . . .." The statute § 154(b)(2) states that a "patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review" and the patent that issued is subject to a terminal disclaimer.

The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

After mailing of this decision, the above-identified application will be returned to the Files Repository.

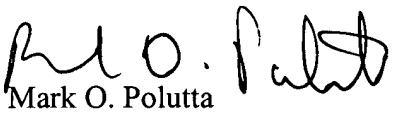
The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Petitioner's deposit account has not been charged a petition fee. [1]

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

By fax: Attn: Patent Term Extension Reply
(571) 273-8300

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

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The petition has been treated under 37 CFR 1.181 in this instance and 37 CFR 1.701 does not provide for patent term extension in this situation. If Petitioner desires review under 37 CFR 1.182 or 37 CFR 1.183, he should provide a rational for such a petition and the required petition fee.

SPE R.15 ragdon

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/1/06

TO SPE OF : ART UNIT 2189

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/890,894 Patent No.: 7028145

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**.

Lamonte M. 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: Not ~~app~~ appropiate for a certificate of correction.

[signature] OPLA -2-7709

~~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

Date Mailed : 02/08/07

Patent No. : 7028145 B1
Patent Issued : 04/11/06
Docket No. : **TIF-15767A**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322.

Respecting the alleged errors in the documents filed on 04/17/06; please see attachment. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

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

Lamonte M. Newsome
For Cecelia Newman, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 305-8309 or (703)-308-9390 #112

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS TX 75265

LMN

SPE B.J Ragdon

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/1/06

TO SPE OF : ART UNIT 2189

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/890,894 Patent No.: 7028145

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

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

Lamonte M. 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: Not appropiate for a certificate of correction.

Marshall OPLA -2709

SPE Art Unit

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

GEORGE H. GERSTMAN
SEYFARTH SHAW
55 EAST MONROE STREET
42ND FLOOR
CHICAGO, IL 60603-5803

Mail Date: 07/02/2010

Applicant	: STEPHEN W. MORRO	: DECISION ON REQUEST FOR
Patent Number	: 5947820	: RECALCULATION of PATENT
Issue Date	: 09/07/1999	: TERM ADJUSTMENT IN VIEW
Application No	: 08/891,476	: OF WYETH
Filed	: 07/11/1997	:
		:

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)
5,934,614	1999-08-10	08/891,519	1997-07-11	3465

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	/Walter F. Fasse #36132/	Date (YYYY-MM-DD)	2007-10-18
Name	Walter F. Fasse	Registration Number	36132

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. 5934614
Issue Date: August 10,1999
Application No. 08891519
Filed: July 11,1997
Attorney Docket No. 3465

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

This is a decision on the electronic petition, filed October 18,2007 ,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 October 18,2007 . 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

In re Patent No. 6131907
Issue Date: October 17,2000
Application No. 08891728
Filed: July 14,1997
Attorney Docket No. 5237

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

This is a decision on the electronic petition, filed June 14,2010 ,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 June 14,2010 . 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)
6131907	2000-10-17	08891728	1997-07-14	089064.000007

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	/Rob L. Phillips, Reg. #40305/	Date (YYYY-MM-DD)	2010-06-14
Name	Rob L. Phillips	Registration Number	40305

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. 5917928
Issue Date: June 29,1999
Application No. 08891958
Filed: July 14,1997
Attorney Docket No. 4606-2

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

This is a decision on the electronic petition, filed December 5,2007 ,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 December 5,2007 . 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)
5,917,928	1999-06-29	08/891,958	1997-07-14	4606-2

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	/Eward Etkin/	Date (YYYY-MM-DD)	2007-12-05
Name	Edward Etkin, Esq.	Registration Number	37824

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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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)
5936318	1999-08-10	08892420	1997-07-14	3459

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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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	/Walter F. Fasse #36132/	Date (YYYY-MM-DD)	2007-10-19
Name	Walter F. Fasse	Registration Number	36132

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)).

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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. 5936318
Issue Date: August 10,1999
Application No. 08892420
Filed: July 14,1997
Attorney Docket No. 3459

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

This is a decision on the electronic petition, filed October 19,2007 ,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 October 19,2007 . 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

BASAM E. NABULSI
MCCARTER & ENGLISH, LLP
FOUR STAMFORD PLAZA
107 ELM STREET
STAMFORD, CT 06902

COPY MAILED

FEB 22 2005

OFFICE OF PETITIONS

In re Patent No. 5,950,177 :
Issue Date: September 7, 1999 :
Application No. 08/892,598 : NOTICE
Filed: July 15, 1997 :
Patentee: William A. Lupien, et al. :

This is in response to the paper filed December 20, 2004, under 37 CFR 1.27(c) seeking status as a small entity.

The Statement Claiming Small Entity Status of December 20, 2004, has been made of record and small entity status has been accorded.

It is noted that petitioner has submitted the payment for the 3.5 years maintenance fee and the surcharge after expiration of a maintenance fee under the unintentional delay standard. However, there is nothing in USPTO records indicating that petitioner has submitted a petition to reinstate the instant expired patent. In order for petitioner to reinstate the expired patent, a petition must be submitted.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
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

Mailed: JUL 14 2003

chk
Paper No. 47

In re Application of Waller, Jr. et al.
Serial No.: 08/892902
Filed: July 14, 1997

DECISION ON PETITION
UNDER *37 CFR 1.84)*

For: MICROPOROUS INKJET RECEPTORS CONTAINING BOTH PIGMENT MANAGEMENT SYSTEM AND A FLUID MANAGEMENT SYSTEM

This is a decision on the PETITION TO ACCEPT COLOR PHOTOGRAPHS filed march 14, 2003 under 37 C.F.R. 1.84.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.84 of (i)The fee set forth in § 1.17(h), (ii) Three (3) sets of color drawings; (iv) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:
The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Applicant has failed to submit a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing with the petition.

Therefore, the request is **DENIED**.

Cynthia H. Kelly
Supervisory Patent Examiner
Technology Center 1700

3M office of Intellectual Property Counsel
P.O. Box 33427
St. Paul. MN 55133-3427

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

Mailed: JUL 14 2003

chk
Paper No. 48

In re Application of Waller, Jr. et al.
Serial No.: 08/892902
Filed: July 14, 1997

DECISION ON PETITION
UNDER *37 CFR 1.48(a)*

For: MICROPOROUS INKJET RECEPTORS CONTAINING BOTH PIGMENT MANAGEMENT SYSTEM AND A FLUID MANAGEMENT SYSTEM

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed July 14, 1997 to correct inventorship under 37 C.F.R. 1.48(a) by adding the name of Thomas p. Klun, Stefan H. Gryska and Larry R. Krepski to the list of inventors of the instant application.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee.

However, applicant has failed to provide a declaration of the actual inventors as required by 37 C.F.R. § 1.63. The declaration submitted with this request lacks the signatures of the originally named inventors.

The request is **DENIED**.

Cynthia H. Kelly
Supervisory Patent Examiner
Technology Center 1700

3M office of Intellectual Property Counsel
P.O. Box 33427
St. Paul. MN 55133-3427

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: 5-7-07

CHK
Paper Number

In re Patent No. 6632510	:	
Issue Date: October 14, 2003	:	DECISION
Appl. No.: 08/892,902	:	ON
Filed: July 14, 1997	:	PETITION
For: MICROPOROUS INKJET RECEPTORS CONTAINING	:	
BOTH A PIGMENT MANAGEMENT SYSTEM AND	:	37 CFR 1.323
A FLUID MANAGEMENT SYSTEM	:	

This is a decision on the petition filed on February 6, 2004 to accept color photographs under 37 CFR 1.323.

Applicant has met all requirements for the acceptance of color photographs under 37 CFR 1.323.

The petition is GRANTED.

The patented file is being forwarded to the Office of Publications for further processing.

Cynthia H. Kelly
Technology Center 1700

Ann Mueting
MUETING, RAUSCH & GEBHARDT, P.A.
BOX 581415
MINNEAPOLIS, MINNESOTA 55401-1415

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

9-20-07

In re Patent No. WALLER ET AL. :
Issue Date: October 14, 2003 : **DECISION GRANTING**
Appl No.: 08/892,902 : **PETITION**
Filed: July 14, 1997 : *37 CFR 1.324*
For: Microporous Inkjet Receptors Containing Both a Pigment Management and a Fluid Management System :

This is a decision on the petition under 37 CFR 1.48, filed on March 1, 2007. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition 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.

Milton I. Cano
Supervisory Patent Examiner
Art Unit 1774
Technology Center 1700

Ann Mueting
3M INNOVATIVE PROPERTIES COMPANY
PO BOX 33427
ST. PAUL, MN 55133-3427

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: September 19, 2007
TO: Certificates of Correction Branch
FROM: Milton I. Cano
SPE, Art Unit 1774
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,632,510 as specified on the attached Certificate.

Milton I. Cano, SPE
Art Unit 1774

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6,632,510
Patented: October 14, 2003

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:

Clinton P. Waller, Jr.
James S. Mrozinski
Omar Farooq
Thomas P. Klun
Stefan H. Gryska
Larry R. Krepski

Milton I. Cano
Supervisory Patent Examiner
Art Unit 1774

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J.E. MCTAGGART
U.S. PATENT AGENT
6650 CRESCENT STREET
SUITE 4
VENTURA CA 93003

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MAY 07 2009

OFFICE OF PETITIONS

In re Patent No. 5,948,013
Issue Date: September 7, 1999
Application No. 08/893,014
Filed: July 15, 1997
Attorney Docket No. 1242R

: DECISION ON REQUEST FOR REFUND

This is a decision on the Request For Refund filed March 30, 2009.

The request is **DISMISSED**.

Applicant contends that reinstatement of the patent was delayed unnecessarily due to failure of the PTO personnel to utilize the payer's telephone and FAX numbers required by the USPTO to be entered by the payer on Form 2038.

Applicant request the $400.00 fee under 37 CFR 1.17(f) be waived and replaced by the $50.00 fee under 37 CFR 1.21(m) for the refused credit card payment and request refund of $350.00.

Applicant is encouraged to note that, **it is not the USPTO practice to call applicant or notify by facsimile of an error made by applicant due to an incorrect credit card number provided when completing the credit card form 2038.**

No authorization was provided to charge to a deposit account. Applicant is also encouraged to note **37 CFR 1.2**.

In the heading of the above request for refund submitted on March 30, 2009, applicant referenced Application No. 09/893,014 instead of the correct Application No. 08/893,014.

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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 2023

October 3, 2001

Balaram Gupta
Aventis Pharmaceuticals Inc.
Patent Department
Route #202-206/P.O. Box 6800
Bridgewater, NJ 08807-0800

In re application of:
Warshawsky et al.
Serial No.: 08/893,080
Filed: July 15, 1997
For: 3-Mercaptoacetylamino-1,5-substituted-2-oxo-azepan Derivatives useful as Inhibitors of Matrix Metalloproteinase

DECISION ON PETITION

This is a decision on the petition received on February 9, 2001, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed November 28, 1997. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned January 29, 1998. A notice of abandonment was mailed on December 11, 2000.

On February 9, 2001, the office received a communication from the attorney of record. Enclosed was an acknowledgment that counsel responded to the Notice to File Missing Part on December 22, 1997.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts of Application on December 22, 1997.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 1205.

Telephone inquiries concerning this matter may be directed to Doshie E. Day at (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

15 FEB 2000

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

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

William F. Lawrence
FROMMER, LAWRENCE, & HAUG, LLP
745 Fifth Avenue
New York, NY 10151

In re Application of :
FRISCH, et al. :
U.S. Application No.: 08/894,359 :
PCT No.: PCT/EP96/00725 : DECISION ON RENEWED
International Filing Date: 22 February 1996 : PETITION
Priority Date: 22 February 1995 :
Attorney's Docket No.: 514410-3540 :
For: USE OF AEROGELS IN :
AGRICULTURE :

This decision is issued in response to applicants' "Request To Reconsider Decision Mailed March 10, 1999 And Grant The Petition Under 37 CFR 1.182 To Withdraw The Holding Of Abandonment And/Or Petition To Revive An Unintentionally Abandoned Application Under 37 CFR 1.137(b)" filed on 13 April 1999.

BACKGROUND

The key background facts for purposes of this Renewed Petition are as follows:

On 20 August 1997, applicants initiated this national stage application. A translation of the international application and the basic national fee were submitted at this time, but the declaration of inventors was not.

On 20 October 1997, applicants submitted a declaration and the surcharge for late-filing of the declaration. However, the materials were submitted with a Communication document which incorrectly set forth the application number as 08/894,354. As a result, the materials were not directed into the instant application file, 08/894,359.

On 27 October 1997, a Notification of Missing Requirements was mailed indicating the need for the declaration, the surcharge, and a $260 fee for extra claims.

On 02 July 1998, a Notification of Abandonment was mailed indicating the application was abandoned for failure to respond to the Notification of Missing Requirements.

On 20 October 1998, applicants filed another "Communication," which was treated by this office as a petition under 37 CFR 1.181 to withdraw the holding of Abandonment. Attached to this Communication were copies of the materials submitted by applicant on 20 October 1997, including the declaration of inventors.

On 10 March 1999, this Office issued a Decision dismissing without prejudice applicants' request to withdraw the holding of abandonment. The basis for the Decision was as follows: (1) the petition was untimely (it was filed nearly a year after the mail date of the Notification of Missing Requirements and more than three months after the mail date of the Notification of Abandonment); (2) there was a disparity between the copy of the 20 October 1997 Communication attached to the petition and the original filed document (the erroneous serial number in the original document had been corrected in the copy attached to the petition); and (3) because applicants had entered an incorrect serial number on the 20 October 1997 Communication, a petition under 37 CFR 1.182 was required.

On 13 April 1999, applicants filed the "Request To Reconsider Decision Mailed March 10, 1999 And Grant The Petition Under 37 CFR 1.182 To Withdraw The Holding Of Abandonment And/Or Petition To Revive An Unintentionally Abandoned Application Under 37 CFR 1.137(b)" considered herein. In this submission, applicants seek to have the Decision on their original petition reversed. Applicants also request that the declaration inadvertently submitted in case 08/894,354 be accepted as having been filed in the instant application, and that the Notification of Missing Requirements and the Notification of Abandonment issued herein be vacated (this request is treated below as a petition under 37 CFR 1.182). Finally, if necessary, applicants seek to revive this application under 37 CFR 1.137(b).

DISCUSSION

A. Reconsideration Of Decision Mailed 10 March 1999

Because it was applicants' own error which caused the 20 October 1997 submission to be directed to the wrong application file, a petition under 37 CFR 1.182 is the appropriate mechanism for correcting the error. If applicants' are entitled to the desired relief, it will be obtained through the petition under 37 CFR 1.182 considered below, not through reconsideration of the earlier Decision issued in response to a petition under 37 CFR 1.181. Accordingly, the Request to Reconsider the Decision mailed 10 March 1999 is dismissed.

B. Petition Under 37 CFR 1.182

Applicants request that the materials inadvertently submitted in case 08/894,354 be accepted as having been filed in the instant application, and they request that the Notification of Missing Requirements and the Notification of Abandonment be vacated. These requests are

being treated together as a petition under 37 CFR 1.182. Such a petition requires payment of the petition fee under 37 CFR 1.17(h). Accordingly, pursuant to applicants' authorization, Deposit Account No. 50-0320 will be charged the $130 petition fee.

The Communication and the accompanying declaration of inventors which were originally directed to application file 08/894,354 both bear PCT/PTO receipt stamps dated 20 October 1997. In addition, attached to applicants' original petition was a postcard receipt which references the declaration and which bears an OIPE receipt stamp dated 20 October 1997. These materials demonstrate that the declaration of inventors (with the accompanying payment of the surcharge for late-filing of the declaration) was in fact received by the USPTO on 20 October 1997. As evidenced by the documents themselves and the explanation contained in the instant petition, the clerical error which caused the misdirection of these materials was unintentional and minor (the inadvertent switching of a "9" to a "4" in the serial number listed on the Communication). Under these circumstances, and in light of the explanation counsel has provided regarding the timeliness and document discrepancy issues, applicants' petition is grantable. Accordingly, the Communication, with accompanying declaration and surcharge, which was filed on 20 October 1997 but inadvertently directed to application file 08/894,354, will be transferred to the instant application file and accepted as having been received on 20 October 1997. Deposit Account No. 50-0320 will be charged $260 for the extra claims fee listed in the Notification of Missing Requirements (this charge is based on the authorization contained in the 20 October 1997 Communication; that Communication referred to a different Deposit Account, but since counsel has subsequently changed law firms, the charge will be made to the Deposit Account referred to in the instant submission).

Because applicants are held to have submitted the declaration, surcharge, and extra claims fees as of 20 October 1997, the Notification of Missing Requirements mailed 27 October 1997 and the Notification of Abandonment mailed on 02 July 1998 are no longer appropriate. Accordingly, both of these Notifications will be vacated.

CONCLUSION

The petition to transfer into this application file the materials filed on 20 October 1997 but inadvertently directed to application file 08/894,354, is **GRANTED.**

The Notification of Missing Requirements mailed 27 October 1997 and the Notification of Abandonment mailed on 02 July 1998 are hereby **VACATED.**

The application has an international filing date of 22 February 1996 under 35 U.S.C. 363 and a date of 20 October 1997 under 35 U.S.C. 371(c) and 102(e).

Deposit Account No. 50-0320 will be charged $130 as the petition fee and $260 as the fee for extra claims over twenty.

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

RMR/LS:rmr

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

#31

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OCT 20 2003

HARRY B. SHUBIN
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
2200 CLARENDON BOULEVARD
ARLINGTON, VA 22201

In re Application of
Werner Weitschies et al
Serial No: 08/894,767
Filed: February 23, 1998
Attorney Docket No.: SCH1526

PETITION DESCISION

This is in response to applicants' petition under 37 CFR 1.144 filed March 3, 2000.

BACKGROUND

A review of the file history shows that this application was accepted under 35 U.S.C. 371 on February 23, 1998. The application as filed contained claims 1-38. In a first Office action mailed December 17,1999, an examiner from Art Unit 1616 set forth a lack of unity requirement under 35 U.S.C. 121 and 372 dividing the claims into two groups and requiring an election of species for any elected group, as follows:

Group I, claims 1-25, drawn to in vitro methods of performing an immunoassay of a liquid.

Group II, claims 26-38, drawn to in vivo method of detecting a ferromagnetic substance.

The species were defined as compounds comprising various ferromagnetic substances, various structure-specific substances such as antibodies, cytokines receptors etc.

In response to this lack of unity, applicants responded with an election on January 24, 2000, electing Group I with traverse. Applicants did not elect a species as required and argued that there is no search burden and that both Groups have a special technical feature in that the underlying measurements are based on remanent magnetization.

Repln. Ref: 11/04/2003 NVILLARI 0006423900
DA#:133402 Name/Number:08894767
FC: 9204 $130.00 CR

Since no species was elected the examiner in Art Unit 1616 sent out a non responsive letter on March 24, 2000, requiring applicants to elect a species and identify the claims readable on the elected species as required by the original lack of unity.

Applicants replied by adding claim 39 and electing a magnetite-labeled anticollagen III and elected a ferromagnetically shielded chamber with a detector, in which remanence is measured (e.g. SQUID). Applicant again presented arguments concerning the traversal.

Since the election was to a specific biological material the application was transferred to an examiner in Art Unit 1641. The first office action of the new examiner, mailed July 5, 2000, was to revise the Lack of Unity requirement. This new lack of unity divided the claims into four groups as follows:

Group I, claim(s) 1, 2, 4, 5, 8-25, 39, drawn to a method of qualitative and/or quantitative detection of analytes in liquid/solid phases using ferromagnetic or ferrimagnetic substances as labels.

Group II, claim(s) 3, 6, 7, drawn to a method of quantitative and/or qualitative detection of analytes in immunoassays or other binding assays using magnetic field sensors and an external magnetic field.

Group III claim(s) 26, 32, 36-38, drawn to a method for detection of ferromagnetic substances that are introduced into a human body or applied to a human body.

Group IV claim(s) 27-31, 35, drawn to a method for detection of ferromagnetic substances that that are introduced into a human body or applied to a human body using external magnetic field and magnetic field sensors.

The examiner stated that Groups (I and II) or (III and IV) lack the same feature which is the use of external magnetic field and magnetic field sensors. Groups (I or II) and Groups (III or IV) differ because the method of Group III or IV are applied to a human body or introduced into the human body.

Applicants replied on August 4, 2000, by electing Group I with traverse including claims 1, 2, 4, 5, 8-25 and 39. Applicant's traversal stated that the "special technical feature" is the use of ferromagnetic or ferromagnetic substances as labels to detect substances and that it did not matter whether the use was *in vitro or in vivo*.

The first action on the merits was mailed on October 25, 2000. In the action the examiner responded that the traversal was not persuasive since the special technical feature alleged by applicants is known in the art as taught by JP 3220442. The Japanese patent teaches a method of determining concentrations of antibodies or antigens binding with an analyte in a liquid sample, comprising suspending the magnetic fine particles fixed with the antibody or antigen binding specifically with the analyte, causing agglutination of the magnetic fine particles by antigen-antibody reaction, then applying a magnetic field to a liquid containing the agglutinate component which results in aligning the magnetic fine particles, turning off the magnetic field and then measuring the remanent magnetic flux density of the agglutinated matter. The examiner held claims 3, 6, 7, and 26-38 non-

elected and made the lack of unity FINAL. The rejections in this first action on the merits included 35 U.S.C. 112, second paragraph, rejections on claims 1, 2, 4, 8-25 and 39; 35 U.S.C. 102(b) rejection of claims 1, 2, 4, 5 as anticipated by JP 3220442; 35 U.S.C. 102(b) rejection of claims 19 and 22-24 as anticipated by EP 0180384; 35 U.S.C. 102(b) rejection of claims 1, 2, 4, 5, 8, 11-12 and 18 as anticipated by US 5,164,297; 35 U.S.C. 103(a) rejection of claims 16-18 over JP 3220442 in view of EP 0180384; obviousness type double patenting of claims 1, 9, 10, and 20 over claims 1, 15 and 20 of US 6,027,946. The examiner stated that claims 13-15 and 21 were free of prior art.

Applicants filed a reply on February 2, 2001, which included amending claims 1-18, 22-32 and 35-39, canceling claims 19-21 and 33-34, and responding to all the rejections, and maintaining the traversal of the lack of unity by restating the arguments of August 4, 2000. Applicant amended claims 1-3 to include the limitation of a heterogeneous immunoassay.

The examiner mailed a Final Office action to applicants on May 11, 2001. Claims 8, 11-18, 25 and 39 were stated as being free of prior art. The 35 U.S.C. 102(b) rejection over US 5,164,297 was withdrawn, as was the 35 U.S.C. 112, second paragraph, rejection. The 35 U.S.C. 102(b) rejections over claims 1, 2, 4 and 5 as anticipated by JP 3220442 and claims 22-24 as anticipated by EP 0180384 were maintained, as was the 35 U.S.C. 103(a) rejection of claims 16-18 over JP 3220442 in view of EP 0180384 and the obvious double patenting rejection. A new rejection under 35 U.S.C. 112, first paragraph, was made over claims 1, 2, 4, 5, 8-18, 22-25, and 39 for lack of enablement.

Applicants replied on July 13, 2001, by proposing amendments to claims 1 and 3 which were entered by the examiner. Applicants addressed all the issues that were pending, maintaining the traversal of the lack of unity holding. The examiner responded to the arguments and mailed out an advisory action to applicants on August 28, 2001, in which the rejections under 35 U.S.C. 112, first paragraph and for obvious double patenting (in view of a proper terminal disclaimer) were withdrawn.

On October 12, 2001, a Notice of Appeal was filed.

On March 19, 2002, Applicants submitted a RCE and an amendment of claims 1-3 to change a limitation to a homogeneous immunoassay, and addressed the rejections and the lack of unity again. Applicants in this traversal restated previous arguments and added a further statement that the office action did not suggest what process other then an external magnetic field could be employed.

The examiner mailed a new non-final office action to applicants on June 18, 2002. The examiner addressed the lack of unity and special technical feature and again cited JP 3220442. Some additional 35 U.S.C. 112, second paragraph, rejections were made on claims 1, 2, 4, 5, 8-18 22-25 and 39 and an objection was made to claim 22. All the 35 U.S.C. 102(b) and 35 U.S.C. 103(a) rejections were withdrawn

On September 18, 2002, an amendment was filed which amended claims 1-2, 5, 11 and 36, added claims 40-42 and canceled claim 4. The new claims, dependent on claim 1,

were placed in Group I and examined. At this point in the prosecution claims 1-3, 5-18, 22-32, 35-39 and newly added claims 40-42 were pending and claims 1, 2, 5, 8-18, 22-25, and 39-42 read on the elected group. Again applicant traversed the lack of unity holding.

On December 3, 2002, the examiner mailed a Final Office action to applicants and replied to applicants' continued traversal of the lack of unity holding. In the Office action the examiner also objected to claim 22 as being dependent on a non elected claim and rejected claims 1, 2, 5 8-18, 22-25 and 39-42 under 35 U.S.C. 112, second paragraph. The elected claims continued to be deemed free of prior art.

An After Final amendment filed by applicants on March 3, 2003, concurrently with this petition, has not yet been considered by the examiner. It is also noted that a second RCE was filed on September 9, 2003, will be processed subsequent to mailing of this decision.

DISCUSSION

Applicants have argued burdensome search, which is not a criteria for a lack of unity. Applicants have also stated that one "special technical feature" is that all four groups employ the use of ferromagnetic or ferrimagnetic substances as labels. However, as the examiner has shown by citing JP3220442 this technical feature is known in the art and therefore this is not a special technical feature which defines a contribution to the art and thus cannot support Unity.

Applicants have stated that there is no difference in detecting the labeled substances either *in vitro or in vivo*. The claims are directed to methods. It is the scope of the methods and the steps in the methods, which must be considered in determining whether or not the methods have unity. The method steps for the detection of an analyte in a liquid or solid phase homogenous immunoassay are generally found as follows: (i) labeling a structure specific substance with ferromagnetic or ferromagnetic substances, (ii) adding the magnetic labeled structure specific substance to a sample to be measured, (iii) magnetizing the sample to be measured with an external magnetic field, and (iv) measuring the remanence of the magnetism after the magnetic field is turned off. The method steps for detection in an organism are the same. There are no additional steps to the method for detection as seen in claim 27. The method of detecting an analyte *in vitro* is the same method with the same steps as detecting an analyte in an organism (*in vivo*). Claim 3, from which steps (i)-(iv) above were taken, is generic to an *in vitro* or *in vivo* process. It is noted that on February 2, 2001, independent claim 27 (detection in an organism) was amended to depend from independent claim 3.

The examiner has stated that Group I, which includes claims 1, 2, 4, 5, 8-25, 39, is drawn to a method of qualitative and/or quantitative detection of analytes in liquid/solid phases using ferromagnetic or ferrimagnetic substances as labels and that Group II, which include claim(s) 3, 6, 7 , is drawn to a method of quantitative and/or qualitative detection of analytes in immunoassays or other binding assays using magnetic field sensors and external magnetic field.

However, the two groups at a minimum overlap since there is no requirement that Group I exclude an external magnetic field. It is also noted that both groups are detecting

analytes in liquid or solid phases which are labeled and both groups use ferromagnetic or ferrimagnetic labels. Also, as noted above and in JP 3220442, "the magnetic field is stopped before measuring the remanent magnetic flux". This statement from the prior art was originally cited in a 35 U.S.C. 102(b) rejection by the examiner for Group I claims. Therefore the examiner by using this statement in a rejection for Group I is stating that an external magnetic field can be part of the process for Group I as well as Group II.

As written, Group II is a method which is encompassed in Group I. The separation of Groups I and II as presented by the examiner does not demonstrate a difference in the methods nor does it preclude a magnetic field being used in the Group I method. They are united by having the same methodology which includes labeling with a ferromagnetic or ferrimagnetic substance and measuring the remanent magnetization of the sample. The same analogy applies to Groups III and IV for the method of detection of analytes in an organism. Group IV is encompassed in Group III. Thus the Lack of Unity as presented by the second examiner was in error with respect to the number of inventive groups.

As presently amended not only does Group I encompass Group II but it also encompasses Groups III and IV since there is no difference in the method performed *in vitro* or *in vivo* . Both use the same method of detection of analytes in a homogeneous immunoassay. As such, neither is patentably distinct from the other and Lack of Unity is no longer present.

DESCISION

Applicants' petition is GRANTED for the reasons set forth above.

Claims 1-3,5-18, 22-32, 35-42 are rejoined.

The application will be forwarded to the examiner for further consideration not inconsistent with this decision.

There is not fee for this petition and the petition fee paid will be credited to applicants' Deposit Account No. 13-3402, as directed.

Should there be any question to this decision, please contact William R. Dixon Jr., by mail addressed to: Director, Technology Center 1600, PO Box 1450, Alexandria, VA 22313-1450, or by telephone (703) 308-3824 or by facsimile transmission at (703) 305-7230.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

OIPE JC42 JUN 30 2003 PATENT & TRADEMARK OFFICE

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ATTORNEY DOCKET NO.: 1990/F 333D (9086*186)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ANDREAS WINTER ET AL :

RECEIVED JUL 01 2003 OFFICE OF PETITIONS

SERIAL NO: 08/895,909 : ART UNIT: 1713

FILED: JULY 17, 1997 : EXAMINER: TESKIN, F.

FOR: METALLOCENES CONTAINING LIGANDS, OF 2-SUBSTITUTED INDENYL DERIVATIVES, PROCESS FOR THEIR PREPARATION, AND THEIR USE AS CATALYSTS :

RECEIVED JUL 07 2003 TC 1700

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

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST-CLASS MAIL IN AN ENVELOPE ADDRESSED TO: MAIL STOP AF, COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA 22313-1450 ON THIS 27th DAY OF June 2003. BY: Diana Picky

COMMUNICATION

Sir:

Applicants hereby attach a copy of a Decision showing that U.S. Patent 5,276,208 was reinstated as of April 3, 2003.

No fees are believed to be due with the filing of this communication. If there are any fees due in connection with this filing, the Commissioner is authorized to charge or credit any overpayment to Deposit Account No. 03-2775.

Respectfully submitted,

CONNOLLY BOVE LODGE & HUTZ LLP

By Ashley I. Pezzner

Ashley I. Pezzner
Registration No. 35,646
Telephone: 302-888-6270

273553

UNITED STATES PATENT AND TRADEMARK OFFICE

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OIPE JC42 JUN 30 2003 PATENT & TRADEMARK OFFICE

Paper No. 41

THOMAS M. MESHBESHER
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WILMINGTON, DE 19899-2207

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In re Reissue Patent No. RE37,208
Issued: June 5, 2001
Reissue Application No. 08/324,260
Filed: October 17, 1994
Original Patent No. 5,276,208
Issued: January 4, 1994
Original Application No. 07/419,212
Filed: November 8, 1991
Attorney Docket No. HOE-90/F-333

This decision concerns the October 23, 2002 "Petition under 37 CFR 1.182 (or Alternatively under 37 CFR 1.378)," which is being properly treated as a petition under 37 CFR 1.377 to record a previously offered maintenance fee payment for the above-referenced patent; and, alternatively, petitions to reinstate the patent under 37 CFR 1.378(b), and in turn, 37 CFR 1.378(c).

The petition under 37 CFR 1.377 is **DISMISSED.**
The alternative petition under 37 CFR 1.378(b) is **DISMISSED.**
The alternative petition under 37 CFR 1.378(c) is **GRANTED.**

The original patent, No. 5,276,208, was reissued as Patent No. RE37,208 on June 5, 2001.

The second maintenance fee for the patent could have been paid from January 4, 2001 to July 4, 2001, or with a surcharge during the grace period July 5, 2001 through January 4, 2002. The fee was not paid on or before January 4, 2002. The patent expired as of January 5, 2002.

Petition under 37 CFR 1.377

The petition asserts that the fee had been offered on June 29, 2001, subsequent to the issuance of the reissue patent, but was refused by the PTO because the fee authorization mailed on June 29, 2001 included the original patent number rather than that of the reissue patent. The petition also refers to a statement, allegedly provided over the telephone by a PTO Maintenance Fee Branch employee, that "the matter was taken care of and no additional steps would be required to ensure payment of the maintenance fee for the subject patent."[1]

Unfortunately, in short of any relevant evidence in writing, the instant §1.377 petition is based merely on hearsay and is subject to dismissal, rendering the patent expired effective January 5, 2002.

Alternative petition under 37 CFR 1.378(b)

Although the current patent statute requires maintenance fee payments at 3½, 7½, and 11½ years

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[1] Affidavit of Linda J. Hoggarth, page 2, top 4 lines.

after a patent is granted in order to maintain the patent in force,[2] the statute also authorizes the Director of the PTO to accept a delayed payment of such a maintenance fee if the delay can be shown to the satisfaction of the Director to have been "unavoidable."[3]

To ascertain that such a delay is indeed "unavoidable" within the meaning of 37 CFR 1.378(b), the PTO requires proof that the **party responsible for paying the maintenance fee** has **exercised the diligence of a reasonably prudent person**[4] **in relation to his most important business.**[5] In other words, the petition must show:[6] that reasonable measures for ensuring proper maintenance of the patent had been taken by the responsible party, but the patent expired notwithstanding such measures; efforts to seek reinstatement of the patent after discovery of its expired status; and that the **entire delay**[7] in paying the fee was **unavoidable**.

The petition and the accompanying affidavit by a Linda J. Hoggarth in essence set forth that:

(1) A "BASF Corporation" ("BASF") is the current assignee of the entire interest in the instant reissue patent.

(2) 6/29/01: Linda J. Hoggarth ("Hoggarth"), the person in charge of paying patent maintenance fees at BASF, mailed the maintenance fee authorization that contained the number of the original patent.

(3) 7/27/01: PTO Notice of Non-Acceptance of Patent Maintenance fee was mailed, informing BASF that the maintenance fee payment offered for the original patent was refused, and that the payment must be submitted under the reissue patent number and the reissue application serial number.

(4) 9/20/02: Hoggarth received a telefax from the parent company of BASF, stating that it had received a maintenance fee reminder for this patent.[8]

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2 35 U.S.C. 41(b).

3 35 U.S.C. 41(c)(1); Laerdal Medical Corporation v. Ambu, Inc., 877 F.Supp. 255, 258, 34 U.S.P.Q.2d 1140 (D. Md. 1995).

4 See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d 1786 (Fed. Cir. 1995), citing In re Patent No. 4,461,759, 16 U.S.P.Q.2d 1883, 1884 (Dep. Ass't Comm'r Pat. 1990) (quoting Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. 977, 982 (D.C. Cir. 1982)), Douglas v. Manbeck, 21 U.S.P.Q.2d 1697, 1700, 1991 U.S. Dist. LEXIS 16404 (E.D. Pa. 1991), aff'd 975 F.2d 869 (Fed. Cir. 1992), and In re Mattullath, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912).

5 Haines v. Quigg, 673 F.Supp. 314, 317; 5 U.S.P.Q.2d 1130 (N.D. Id. 1987), citing Ex Parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887); In re Mattullath, *supra* note 4, at 514; also, Winkler v. Ladd, 221 F.Supp 550, 553; 138 U.S.P.Q. 666 (D.D.C. 1963).

6 See Ray v. Lehman, *supra* note 4, at 609; 37 CFR 1.378(b)(3); MPEP section 2590 (Aug. 2001).

7 From the time the fee was due and payable, until the filing of a grantable §1.378 petition.

8 The patent had already expired on 1/5/02.

The Office notes that:

(1) According to the PTO assignment records, Targor GMBH is the assignee under the last assignment of the original patent, recorded in the PTO in 1998. The petition represents BASF Corporation as the current assignee of the entire interest in the reissue patent, and consequently, the party responsible for maintaining the original patent and later the reissue patent.

(2) Based on an alleged telephone conversation with a PTO employee in July of 2001, Hoggarth assumed, without verifying for more than one year, that the requisite fee amount was charged from BASF's deposit account and posted to the instant reissue patent as the second maintenance fee payment.

(3) The petition has not supplied any evidence supporting the statements made in the Hoggarth Affidavit.

In conclusion, the petition fails to show that Hoggarth, on behalf of BASF in maintaining this patent, has exercised the diligence of a reasonably prudent person in relation to his most important business. Specifically, the petition has not shown that the entire delay in paying this maintenance fee constitutes "unavoidable delay" within the meaning of 37 CFR 1.378(b).[9] The §1.378(b) petition is thus dismissed.

Alternative petition under 37 CFR 1.378(c)

The petition: was filed within 24 months of January 4, 2002; authorizes the Office to charge the $2,020 maintenance fee and the $1,640 surcharge to Deposit Account No. 02-1201;[10] and states that the delay in paying the fee was unintentional. The §1.378(c) petition is thus granted, and the patent is hereby reinstated as of the mailing date of this decision.[11]

Finally, the practitioner signing the instant petition uses an address different from that in the Office record for this reissue patent. While a copy of the decision is being sent to the practitioner, all future correspondence on this reissue patent will be mailed to the current address-of-record unless the Office is properly instructed otherwise.

If BASF, indeed, is the current assignee of the entire interest in this reissue patent, and wishes to change the correspondence, a proper request should be submitted along with:

-an appropriate statement under 37 CFR 3.73(b), establishing BASF's ownership in the reissue patent to enable BASF to take any action on matters related to this reissue

---

9 See MPEP section 2590 (Aug. 2001), citing In re Patent No. 4,409,763, 7 U.S.P.Q.2d 1798, 1800 (Comm'r Pat. 1988), aff'd *sub nom.*

10 Counsel authorized the surcharge under 37 CFR 1.20(I)(1), which should have been §1.20(I)(2) for a §1.378(c) petition. A §1.378(c) petition without the requisite surcharge would be dismissed.

11 See 35 U.S.C. 41(c)(1); 37 CFR 1.378(a) (If the Commissioner accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but it will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).) (emphasis added); see MPEP 2591 (Aug. 2001) re such intervening rights.

patent before the PTO;[12] and

-a copy of the assignment(s), evidencing a chain of title from Targor GMBH to BASF.

The file is being returned to Files Repository.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

cc: Fernando A. Borrego, Esq.
BASF Corporation
1609 Biddle Avenue
Wyandotte, MI 48192

---

[12] The §3.73(b) statement must be, and must indicate that it is, signed by a person authorized to act on behalf of BASF, e.g., an officer of the corporation.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : May 22, 2008

TO SPE OF : ART UNIT 1796

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/895950 Patent No.: 7296146 B2

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.

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

Comments: _____

/David Wu/

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

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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SEYFARTH SHAW LLP
131 S. DEARBORN ST., SUITE 2400
CHICAGO, IL 60603-5803

Mail Date: 07/02/2010

Applicant	: ROBERT A. LUCIANO JR.	: DECISION ON REQUEST FOR
Patent Number	: 6062981	: RECALCULATION of PATENT
Issue Date	: 05/16/2000	: TERM ADJUSTMENT IN VIEW
Application No	: 08/895,966	: OF WYETH
Filed	: 07/17/1997	:
		:

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.

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. 35

CONRAD O GARDNER
1502 N 97TH STREET
SEATTLE WA 98103

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AUG 0 3 2004

OFFICE OF PETITIONS

In re Application of
Gardner
Application No. 08/896,514
Filed: June 23, 1997
For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT POLLUTION PROCESSING

: ON PETITION

The above-identified application has been referred to this office in view of a communication filed May 3, 2004, captioned "Amendment withdrawing terminal disclaimer," which is being treated as a petition under 37 CFR 1.182 asking that the USPTO withdraw the terminal disclaimer filed July 3, 2000.

The petition is **dismissed as lacking the necessary papers and fees**.

As explained in the Manual of Patent Examining Procedure ("MPEP") section 1490, Part A (at 1400-102 *et seq.*, copy of entire section enclosed with this decision for petitioner's convenience), a terminal disclaimer recorded against a pending application may, under appropriate circumstances consistent with the orderly examination process, be nullified only by the filing of a petition under 37 CFR 1.182 (and its $130 fee).

Should petitioner wish to renew his petition, a separate paper captioned to that effect, along with any arguments in support of the requested relief and also addrressing, since this application is closed to prosecution and under appeal, why such would be now consistent with an orderly examination process, and the $130 petition fee should be addressed as follows:

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

By hand: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

By FAX: (703) 872-6906
ATTN: Office of Petitions

This application is being forwarded to the Board of Patent Appeals and Interferences.

Telephone inquiries related to this communication should be directed to th3e undersigned at (703) 305-1820.

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

Enclosure: Copy of MPEP section 1490

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. 40

CONRAD GARDNER
1502 N 97TH STREET
SEATTLE WA 98103

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NOV 0 3 2004

OFFICE OF PETITIONS

In re Application of:
Gardner
Application No. 08/896,514
Filed: June 23, 1997
For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT POLLUTION PROCESSING

: ON PETITION

This is a decision on the petition filed September 7, 2004, which is being treated as a petition under 37 CFR 1.182 asking that the USPTO withdraw the terminal disclaimer filed July 3, 2000.

The petition is **dismissed,** but may be subject to favorable reconsideration upon prompt renewal as noted in more detail *infra.* This application will be retained in the Office of Petitions for a period of ONE MONTH, in which time petitioner should either renew the petition under 37 CFR 1.182 and submit the RCE (and fee), or advise the USPTO, in writing, that petitioner desires to continue with the current appeal. This period of time may **not** be extended under either 37 CFR 1.136(a) or § 1.136(b)

Petitioner renews his request for withdrawal of the aforementioned terminal disclaimer, which was approved and accepted by the USPTO on July 12, 2000.

The USPTO communication of August 3, 2004, noted that any renewed request for relief would have show consistency with the orderly examination process. The instant petition contends the request is consistent with an orderly examination process in that appellant's request for oral hearing before the Board of Patent Appeals and Interferences ("BPAI") would not be heard until November of 2004.

Petitioner has failed to advance any reasonable nexus between his request for extraordinary relief by way of withdrawal of the terminal disclaimer, and an oral hearing before the BPAI. Petitioner complains that the terminal disclaimer was proffered upon his expectation, after an interview with the then examiner of record, that a claim(s) amended to contain "cruise mode operation" and "hybrid vehicle" would be allowable if coupled with applicant's submission of a terminal disclaimer, and while petitioner contends that one or more of such claims is of record, none of these claims has been allowed. Inspection of the relevant Examiner's Interview Summary indicating that an interview occurred on November 2, 1998, also reveals that the examiner indicated (1)

agreement was not reached, (2) only claims 46 and 50 were discussed, and (3) the other claims would be subjected to an updated search. If, as petitioner contends, there are present herein one or more claims that contain both "cruise mode operation" and the "hybrid vehicle" limitations and further, the terminal disclaimer remains recorded, then the current appeal before the BPAI will determine the whether these claims are properly rejected *vel non*.

Petitioner appears to overlook that a terminal disclaimer can only overcome, or forestall, a rejection under the judicial doctrine of obviousness-type double patenting which rejection is necessarily predicated upon the claims of another application or patent in which the applicant is also the named inventor. Inspection of the rejections currently of record fails to reveal that any claim has been rejected on the grounds of obviousness-type double patenting over the claims found in any other application or patent in which petitioner is the named inventor. That is, the terminal disclaimer of which petitioner complains has no effect on the appealed rejections of record: indefiniteness under 35 U.S.C. § 112, second paragraph; anticipation under 35 U.S.C. § 102(b); and obviousness under 35 U.S.C. 103(a).

However, to favorably treat the request for withdrawal of the terminal disclaimer some four years after the initial close of prosecution and appeal would have the effect of now raising the question of the applicability of applicant's U.S. Patent No. 5,301,764 to one or more of the instant claims under appeal, under the judicial doctrine of obviousness-type double patenting. Petitioner has not shown, and inspection of the record fails to reveal, how raising the issue of obviousness-type double patenting, if the terminal disclaimer were now withdrawn, would be consistent with the orderly examination process. That is, two office actions on the merits mailed August 14, 2000, and April 2, 2001, and the appeal process initiated by the Notice of Appeal filed May 8, 2001, culminating in the acceptable Brief on Appeal filed December 3, 2003, the Examiner's Answer of March 3, 2004, and the Reply Brief filed May 3, 2004 and considered by the examiner on July 21, 2004, were all generated with the recorded terminal disclaimer mooting the need for consideration of the question of obviousness-type double patenting. To now raise the issue of obviousness-type double patenting would not be consistent with the orderly examination process, especially in light of petitioner's delay in seeking withdrawal of the terminal disclaimer until prosecution had advanced to the late stage of the instant appeal.

Nevertheless, 37 CFR 1.182 notes that relief may be granted under the regulation "subject to such other requirements as may be imposed." Under the circumstances of this case, the filing of an RCE under 37 CFR 1.114 (and fee) will be imposed as a requirement of favorably considering petitioner's renewed request to withdraw the recorded terminal disclaimer. The successful request for withdrawal of the recorded terminal disclaimer, in this case, will be considered to fulfill the requirement of 37 CFR 1.114(c) for a submission. Of course, if petitioner renews the petition under 37 CFR 1.182 and files the RCE (and fee), then upon favorable treatment of the renewed petition the RCE will be treated as a request to withdraw the appeal and to reopen prosecution of this application before the examiner. See 37 CFR 1.114(d).

If petitioner wishes to continue with the current appeal, then the petition under 37 CFR 1.182 should not be renewed and the RCE should not be filed in reply to this decision. Rather, petitioner should advise the USPTO, in writing, that he wishes to continue with the current appeal. In this instance, however, the terminal disclaimer will not be withdrawn and will remain in full force and effect.

As noted above, this application will be retained in the Office of Petitions for a period of ONE MONTH, in which time petitioner should either renew the petition under 37 CFR 1.182 and submit the RCE (and fee), or advise the USPTO, in writing, that petitioner desires to continue with the current appeal. This period of time may **not** be extended under either 37 CFR 1.136(a) or § 1.136(b). At the end of this period, plus reasonable mail room time, if petitioner has not further replied, this application will be returned to the BPAI.

Any reply to this decision should be addressed as follows:

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

By hand: Customer Window located at:
U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

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

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
Office of the Deputy Commissioner for
Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

Paper No. 42

CONRAD GARDNER
1502 N 97TH STREET
SEATTLE WA 98103

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NOV 10 2004

OFFICE OF PETITIONS

In re Application of:
Gardner
Application No. 08/896,514
Filed: June 23, 1997
For: EXTENDED RANGE MOTOR VEHICLE HAVING AMBIENT POLLUTION PROCESSING

: LETTER

The USPTO is in receipt of two facsimile transmissions dated November 8, 2004 which are being treated as an indication by applicant that he will not be filing a reply to the decision of November 3, 2004, and that he wishes the appeal to continue.

Accordingly, the instant application is being returned to the jurisdiction of the Board of Patent Appeals and Interferences.

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

UNITED STATES
PATENT AND
TRADEMARK OFFICE

APR - 9 2002

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

#21

PILLSBURY WINTHROP LLP
INTELLECTUAL PROPERTY GROUP
1600TYSONS BOULEVARD
MCLEAN, VA 22102

In re Application of	:
Delin Zhu et al	:
Serial No.: 08/896,535	: PETITION DECISION
Filed: July 18, 1997	:
Attorney Docket No.: 23484	:

This is a decision on the Petition under 37 CFR 1.181, filed August 27, 2001, to Withdraw Holding of Abandonment based on a timely filed response

A review of the file history shows that the examiner mailed a Notice of defective Appeal Brief to applicants on May 9, 2001, setting a one month shortened time period for reply. Applicants replied on July 5, 2001, with a revised Appeal Brief and a request and fee for a one month extension of time. The examiner mailed a Notice of Abandonment to applicants on August 6, 2001, indicating that the Appeal Brief was not timely filed for lack of an extension of time. The Notice of Abandonment was clearly mailed in error and is withdrawn and the application restored to pending status.

Applicant's petition under 37 CFR 1.181 is GRANTED.

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.

John Doll
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GO

Paper No. 26

BONNIE WEISS MCLEOD
MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004

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MAY 07 2003

OFFICE OF PETITIONS

In re Application of
Delin Zhu et al
Application No. 08/896,535
Filed: July 18, 1997
Attorney Docket No. 23484

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 1600.

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

Best Available Copy

NOTICE RE: CERTIFICATES OF [redacted]CTION

DATE : 2-13-04 Paper No.: 30

TO : Supervisor, Art Unit 1600

SUBJECT : Certificate of Correction Request in Patent No.: 6590088

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 read as shown in the certificate of correction? No new matter should be introduced, nor should the sco meaning of the claims be changed. .

-Check cited References

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 Correctio placing a check mark (✓) in the box that reflects your decision, which corresponds to the question che above.

☐ YES ☑ NO ☐ Comments below

☐ Comments: The amendment to Claim 23 would change the scope of the claim

However, the cited references changes to the face of the File are acceptable

Christina Chan 1644

Supervisor Art Unit

PTOL-306 (REV. 10/87) U.S. DEPARTMENT OF COMMERCE Patent and Trade

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 35

TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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SEP 2 5 2001

OFFICE OF PETITIONS

In re Application of
Steven C. Quay
Application No. 08/896,821
Filed: July 18, 1997
Attorney Docket No. 21020012140

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 8, 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 September 18, 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 December 19, 2000.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $890 extension of time submitted on March 26, 2001 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

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

The application file is being forwarded to Technology Center 1600 for further processing.

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

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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

KENNETH E. MACKLIN
MILDE, HOFFBERG & MACKLIN
10 BANK STREET
SUITE 460
WHITE PLAINS NY 10606

COPY MAILED

MAR 1 1 2003

OFFICE OF PETITIONS

In re Application of
Karsten Brauer, Frank Gansicke, Helmut Friedrich, and Heinz Fabian

Application No. 08/897,713
Filed: July 21, 1997
Attorney Docket No.: HQ202
Title: PROCESS AND APPARATUS FOR THE PRODUCTION OF A CYLINDRICAL COMPONENT OF GLASS

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a)[1], filed January 6, 2002[2], to revive the above-identified application.

On August 31, 1998, the Office mailed a non-final Office action to petitioner. On December 4, 1998, a reply was received. On March 18, 1999, a letter was mailed to the applicant, indicating that the reply was non-responsive, and giving the applicant one (1) month to reply. On April 22, 1999, an amendment was received which contained a certificate of mailing dated April 19, 1999. Again, this amendment was non-responsive, and on June 15, 1999, another letter was mailed to the applicant, indicating that this third attempt was non-responsive, and again giving the applicant one (1) month to reply. The above-identified application became abandoned for failure to reply in a timely manner to this letter of June 15, 1999. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(l);
(3) A showing to 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 was unavoidable;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 The petition contains a certificate of mailing dated December 31, 2002.

above-identified application became abandoned on July 16, 1999. A Notice of Abandonment was mailed on October 1, 1999.

On January 6, 2002, petitioner filed the instant petition. Petitioner has included the petition fee, a statement of facts, a copy of the record card associated with this file, and an amendment.

The instant petition lacks item (3) above.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

> "In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]
>
> "[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]
>
> "The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
>
> "The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

> "[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

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3 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

4 Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

5 Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. 706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

6 Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

7 Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8]

Nonawareness of a PTO rule will not constitute unavoidable delay[9]

The burden of showing the cause of the delay is on the person seeking to revive the application[10].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[11].

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

> PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION
>
> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
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> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

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8 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

9 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)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

10 Id.

11 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

§ 1.121 Manner of making amendments in application.

(c) Claims. —

(1) Amendment by rewriting, directions to cancel or add . Amendments to a claim must be made by rewriting such claim with all changes (e.g, additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction.

(i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., "amended," "twice amended," or "new").

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., "amended," "twice amended," etc. The parenthetical expression "amended," "twice amended," etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner contends that this mailing was never received.

The showing in the instant petition is not sufficient to constitute unavoidable delay. The declaration of facts alleges that neither the letter mailed by the Office on June 15, 1999, nor the Notice of Abandonment was ever received. Petitioner has supplied a copy of a "manually maintained record card", where all outstanding requirements from the Office are recorded. The record card has been reviewed, and the last entry on the card is "Resp to Comm: ~~4-18-99~~ 4-19-99."

Petitioner further states "Applicant's electronic records, which constitute a parallel docket system, are generally updated and no archive copy is maintained, however, a review of printed documents from around this time period did not reveal any outstanding requirement." It is noted

that no copy of this printout has been supplied, and it is further noted that the word "generally" suggests that sometimes this docket system is updated, and sometimes it is not.

Unfortunately, this evidence does not establish that the delay was unavoidable. Petitioner must submit a copy of the file jacket and the docket report where the non-received Office communication would have been entered had it been received and docketed, and establish that this docketing system is a reliable indicator of what mail has been received. A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period, in order to establish that the correspondence at issue was not received, and merely misplaced and filed with another file.

Furthermore, the delay which petitioner must show to be unavoidable is the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition. Between the filing of the response on April 22, 1999, and the filing of this non-grantable petition, three years and eight months have passed. It stands to reason that a registered practitioner, acting in relation to his most important business, would have realized that something was amiss, and would not have allowed this amount of time to pass without inquiring as to the status of the application. While it is acknowledged that at times, the Office can be slow in processing applications and responding to amendments, a delay of over 3 ½ years is rather excessive.

Also, the abandonment did not stem from the PTO's failure to notify petitioner of the requirement to re-submit the amendment: the application went abandoned as a direct result of petitioner's continued failure to submit the amendment in the proper form. As a registered member of the patent bar, petitioner is expected to know the relevant laws, regulations, and fees pertaining to his practice and under which this Office operates. As stated above, nonawareness of a PTO requirement will not constitute unavoidable delay. Petitioner cannot commit repetitive errors which stem from his failure to know the manner in which amendments must be submitted, and later characterize these mistakes as unavoidable.

Should petitioner desire to file a renewed petition, petitioner should have a person with firsthand knowledge of the underlying circumstances make the necessary statement, and submit both a copy of the file jacket and a copy of the docket report. Furthermore, petitioner must address the reliability of the information contained therein, and explain this rather significant period of delay in filing this petition[12]. Finally, the multiple failures to submit a responsive amendment must be addressed, and petitioner will need to show why a reasonably prudent person, acting in relation to his most important business would have continually filed amendments which did not conform to the requirements, and then wait 3 ½ years before filing this petition.

On the facts presented, this situation fails to constitute unavoidable delay. These facts might constitute an unintentional delay in prosecution, but it certainly does not rise to the level of unavoidable. Therefore, it is determined that the petitioner cannot establish that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable which is required in order for relief to be granted under 37 CFR 1.137(a).

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12 Petitioner is reminded that the extreme delay in filing this petition may be considered evidence of intentional delay, which is an absolute bar to revival As such, it would behoove petitioner to establish that this lengthy delay was unavoidable.

Consequently, the petition is **DISMISSED**.

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

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b) [13]. If this petition is filed, petitioner will still need to explain the delay of over three years.

Petitioner may reply to this decision via facsimile[14], hand-delivery[15], or by mail[16].

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries should be directed to Paul Shanoski, Petitions Attorney, at (703) 305-0011.

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

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13 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

14 (703) 308-6916, Attn: Office of Petitions.

15 Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

16 Commissioner for Patents, Box DAC, Washington, DC 20231.

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MAY 13 2003

OFFICE OF PETITIONS

In re Application of :
Karsten Brauer, Frank Gansicke, Helmut Friedrich, and Heinz Fabian :
Application No. 08/897,713 : DECISION ON PETITION
Filed: July 21, 1997 :
Attorney Docket No.: HQ202 :
Title: PROCESS AND APPARATUS FOR THE PRODUCTION OF A CYLINDRICAL COMPONENT OF GLASS :

This is a decision on the renewed petition under 37 CFR 1.137(a)[1] to revive the above-identified application, as well as a petition to withdraw the holding of abandonment pursuant to 37 C.F.R. §1.181(a), both filed together on April 1, 2003.

On August 31, 1998, the Office mailed a non-final Office Action to petitioner. On December 4, 1998, a reply was received. On March 18, 1999, a letter was mailed to the applicant, indicating that the reply was non-responsive, and giving the applicant one (1) month to reply. On April 22, 1999, an amendment was received which contained a certificate of mailing dated April 19, 1999. Again, this amendment was non-responsive, and on June 15, 1999, an other letter was mailed to the applicant, indicating that this third attempt was non-responsive, and again giving the applicant one (1) month to reply. The above-identified application became abandoned for failure to reply in a timely manner to this letter of June 15, 1999. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(l);
(3) A showing to 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 was unavoidable;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

above-identified application became abandoned on July 16, 1999. A Notice of Abandonment was mailed on October 1, 1999.

On January 6, 2002, petitioner filed the original petition, which was dismissed via a decision mailed on March 11, 2003, for failure to establish that the delay was unavoidable.

Concerning the petition to withdraw the holding of abandonment, filed under 37 C.F.R. §1.181(a), the petition is dismissed as untimely. MPEP 711.03(c) sets forth that a petition to withdraw the holding of abandonment must be filed within two months of the mail date of the notice of abandonment (October 1, 1999)[2].

Concerning the renewed petition, the petition lacks item (3) above.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

> "In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]
>
> "[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]
>
> "The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
>
> "The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

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2 See also 37 C.F.R. 1.181(f).

3 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

4 Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

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The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8]

Nonawareness of a PTO rule will not constitute unavoidable delay[9]

The burden of showing the cause of the delay is on the person seeking to revive the application[10].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[11].

The Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those actions or inactions[12]. Specifically, petitioner's delay caused by the mistakes of negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133[13].

The actions of the attorney are imputed to the client, for when a petitioner voluntarily chooses an attorney to represent him, the petitioner cannot later distance avoid the repercussions of the actions or inactions of this selected representative, for clients are bound by the acts of their lawyers/agents, and constructively possess "notice of all facts, notice of which can be charged upon the attorney[14]."

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7 Id.

8 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

9 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)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

10 Id.

11 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).
12 Link v. Wabash, 370 U.S. 626, 633-634 (1962).
13 Haines, 673 F.Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 103, 131 (Comm'r Pat. 1891).
14 Link at 633-634.

"Courts hesitate to punish a client for its lawyer's gross negligence, especially when the lawyer affirmatively misled the client," but "if the client freely chooses counsel, it should be bound to counsel's actions[15]."

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

> PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION
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> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
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> Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

§ 1.121 Manner of making amendments in application.

> (c) Claims. —
> (1) Amendment by rewriting, directions to cancel or add . Amendments to a claim must be made by rewriting such claim with all changes (e.g, additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction.
> (i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., "amended," "twice amended," or "new").

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15 Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983). See also, Wei v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983).

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., "amended," "twice amended," etc. The parenthetical expression "amended," "twice amended," etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

Application of the standard to the current facts and circumstances

In both the original and the renewed petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner contends that this mailing was never received.

With the renewed petition, Petitioner has set forth that two consecutively mailed pieces of correspondence were not received by the applicant. Petitioner discusses a probability of correlated errors and an impediment to delivery, but this is mere speculation, and does not amount to the sort of documentary evidence which would lead the Office to determine that the abandonment of this application was unavoidable.

Petitioner asserts that he does indeed maintain a log of correspondence of all mail received from the Office. Petitioner describes this system as consisting of an index card associated with each file, an electronic system, and a notation on the face of the file wrapper.

Petitioner describes the electronic system as a "sequential entry system,[16]" meaning that as correspondence is received, it is entered into the computer.

Petitioner has included a print-out of this electronic system, which contains all mail received on the following dates:

- April 13, 1999 – April 15, 1999
- June 9, 1999 – June 12, 1999
- June 23, 1999 – June 25, 1999
- July 8, 1999 – July 10, 1999
- July 14, 1999 - July 15, 1999
- August 25, 1999 - August 26, 1999

Petitioner adds "the sheets provided are the only sheets now known to exist for this date range. Presumably, the relevant docket entry should have appeared on the 6/23/99, and/or 7/14/99

16 Petition, page 5.

docket sheets...a search has been conducted, and no such back-up or paper copy is known to exist. The firm has no formal policy on maintaining such sheets, especially from so long ago[17]."

The correspondence at issue was mailed from Northern Virginia to New York State on June 15, 1999. Unfortunately, it does not appear that petitioner will be able to make the required showing of non-receipt in that this record is incomplete, as the report does not show all articles of mail received during the relevant time period. This report establishes that that the piece of correspondence at issue was not received during the periods set forth above[18]. It cannot establish that a piece of correspondence was not received on a date which is not shown above. For instance, if the article of mail took from three to five days to travel from Northern Virginia to White Plains, New York, it would not appear on the listing Petitioner has provided, as the period of June 18, 1999 – June 20, 1999 is not represented.

Petitioner adds that maintaining a list of received correspondence would not provide any "particular workflow benefit, failsafe backup, or efficiency, and would therefore only be of value in such rare instances as are now presented." Petitioner is correct, as if he were able to provide evidence that the article of mail was not received, his chances of being able to submit a grantable petition would be greatly increased.

Petitioner adds "it is believed that there is no requirement for a consolidated and persistent mail log, and any such requirement might be considered an abuse of discretion and fail to meet OMB guidelines." Petitioner is correct in stating that the Office does not require practitioners to maintain a consolidated and persistent mail log. Practitioners are free to practice their profession without ever creating a mail log, much less maintaining them. However, if a practitioner decides against maintaining a mail log, he does so at his own peril, as this is the only method of establishing non-receipt of a mailing, per the portion of MPEP 711.03(c) reproduced both in this decision and the previous decision[19]. Petitioner is reminded that the burden rests on him to establish that the delay was unavoidable[20].

Petitioner then states that the copy of the index card submitted with the previous decision evinces that the correspondence was not received, but as set forth in the previous decision:

> A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period, in order to establish that the correspondence at issue was not received, and merely misplaced and filed with another file.

Petitioner has reproduced a section of this portion of the decision on page 6 of the renewed petition, but petitioner has omitted the operative part of the second sentence above: *and merely misplaced and filed with another file.* This portion of the sentence is crucial, since if the article of mail was received and mistakenly filed with another file, it would not appear on this index

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17 Id..

18 With the obvious exception of the first period, as this date range precedes the date of mailing.

19 More specifically, see the portion which addresses "a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement."

20 MPEP 711.03(c)III(F).

card. As such, the index card cannot serve as evidence of non-receipt, as it is not a docket report, in that it does not show all incoming mail received during the relevant time period.

Petitioner explains that if a response is submitted, or if it is determined that no response is due, the entry is removed from the docketing system. With this revelation, it is determined that the docket print-out is not acceptable, for the following two reasons.

First, the docket print-out is not a mail log. A mail log is a record of items received. Whether a response is due or has been submitted is irrelevant to a record that accurately reflects all correspondence received during a particular time period. As such, this listing is a "to-do" list rather than a mail log, and hence, even if the record showed all relevant dates, it would not be acceptable as a record of all incoming mail.

Secondly, if entries in the record are deleted after a response is sent or if it is determined that no response is due, this negates the record's ability to confirm that an article of mail was or was not received. Once a member of the office staff deletes an entry, the record would provide to a later observer a false indication that the article of mail was never received.

For these reasons, the showing in the renewed petition is not sufficient to constitute unavoidable delay, and the renewed petition under 37 C.F.R. §1.137(a) is **DISMISSED**.

In the previous decision, it was noted that the period of time which elapsed between the abandonment of this application and the filing of the original petition amounted to 3 ½ years. The impact of this time period on the diligence exhibited by petitioner need not be addressed, as Petitioner has not shown the abandonment to be unavoidable.

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

NOTICE:

Any request for reconsideration of this decision under 37 C.F.R. § 1.137(b) 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. Failure to respond will result in abandonment of the application. The request for reconsideration should include a cover letter entitled "Second Renewed Petition under 37 C.F.R. §1.137(b)," and should only address the deficiencies noted in this decision.

Thereafter, there will be no further reconsideration of this matter.[21, 22]

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[21] For more than a century, punctuality and due diligence, equally with good faith, have been deemed essential requisites to the success of those who seek to obtain the special privileges of the patent law, and they are demanded in the interest of the public and for the protection of rival inventors. See: Porter v. Louden, 7 App.D.C. 64 (C.A.D.C. 1895), citing Wollensak v. Sargent, 151 U.S. 221, 228, 38 L. Ed. 137, 14 S. Ct. 291 (1894). An invention benefits no one unless it is made public, and the rule of diligence should be so applied as to encourage

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b) [23].

The reply to this letter may be submitted by mail[24], hand-delivery[25], or facsimile[26].

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

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reasonable promptness in conferring this benefit upon the public. Automatic Electric Co. v. Dyson, 52 App. D.C. 82; 281 F. 586 (C.A.D.C. 1922). Generally, 35 U.S.C. §6; 37 C.F.R.§§1.181, 182, 183.

22 If, on the second request for reconsideration, Petitioner fails to satisfy the showings burden required: (a) the resulting decision may be one viewed as final agency action; and (b) provisions for reconsideration, such as those at 37 C.F.R. §1.137(e), will **not** apply to that decision.

23 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

24 Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1460, Alexandria, VA 22313-1460. **Note that this is a new address, as the USPTO has changed addresses as of May 1, 2003.**

25 Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

26 (703) 308-6916, Attn: Office of Petitions.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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SEP 0 4 2003

OFFICE OF PETITIONS

In re Application of
Karsten Brauer, Frank Gansicke, Helmut Friedrich, and Heinz Fabian
Application No. 08/897,713
Filed: July 21, 1997
Attorney Docket No.: HQ202
Title: PROCESS AND APPARATUS FOR THE PRODUCTION OF A CYLINDRICAL COMPONENT OF GLASS

DECISION ON THIRD RENEWED PETITION AND PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the third renewed petition under 37 CFR §1.137(a)[1] to revive the above-identified application, as well as a petition under 37 C.F.R. §1.137(b), both filed together on July 16, 2003.

On August 31, 1998, the Office mailed a non-final Office Action to petitioner. On December 4, 1998, a reply was received. On March 18, 1999, a letter was mailed to the applicant, indicating that the reply was non-responsive, and giving the applicant one (1) month to reply. On April 22, 1999, an amendment was received which contained a certificate of mailing dated April 19, 1999. Again, this amendment was non-responsive, and on June 15, 1999, another letter was mailed to the applicant, indicating that this third attempt was non-responsive, and again giving the applicant one (1) month to reply. The above-identified application became abandoned for failure to reply in a timely manner to this letter of June 15, 1999. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the

1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(l);
(3) A showing to 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 was unavoidable;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

above-identified application became abandoned on July 16, 1999. A Notice of Abandonment was mailed on October 1, 1999.

On January 6, 2002, petitioner filed the original petition, which was dismissed via a decision mailed on March 11, 2003, for failure to establish that the delay was unavoidable.

On April 1, 2003, petitioner filed the renewed petition, along with a petition under 37 C.F.R. §1.181(a). Both were dismissed via a decision mailed on May 13, 2003: the former for failing to establish that the delay was unavoidable, and the later for a lack of timeliness.

The third renewed petition under 37 C.F.R. §1.137(a)

Concerning the third renewed petition under 37 C.F.R. §1.137(a), the petition is **DISMISSED**.

The third renewed petition lacks item (3) above.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[2]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[3]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[4]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[5]

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2 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

3 Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

4 Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. 706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[6]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[7]

Nonawareness of a PTO rule will not constitute unavoidable delay[8]

The burden of showing the cause of the delay is on the person seeking to revive the application[9].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[10].

The Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and the applicant is bound by the consequences of those actions or inactions[11]. Specifically, petitioner's delay caused by the mistakes of negligence of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 USC 133[12].

The actions of the attorney are imputed to the client, for when a petitioner voluntarily chooses an attorney to represent him, the petitioner cannot later distance avoid the repercussions of the actions or inactions of this selected representative, for clients are bound by the acts of their lawyers/agents, and

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5 Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

6 Id.

7 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

8 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)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

9 Id.

10 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).
11 Link v. Wabash, 370 U.S. 626, 633-634 (1962).
12 Haines, 673 F.Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32; Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981): Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 103, 131 (Comm'r Pat. 1891).

constructively possess "notice of all facts, notice of which can be charged upon the attorney[13]."

"Courts hesitate to punish a client for its lawyer's gross negligence, especially when the lawyer affirmatively misled the client," but "if the client freely chooses counsel, it should be bound to counsel's actions[14]."

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

> PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION
>
> In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).
>
> To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).
>
> The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).
>
> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See Lorenz v. Finkl, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); Krahn v. Commissioner, 15 USPQ2d 1823, 1824 (E.D. Va 1990); In re Application of Fischer, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).
>
> Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based upon unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

§ 1.121 Manner of making amendments in application.

> (c) Claims. —
> (1) Amendment by rewriting, directions to cancel or add . Amendments to a claim must be made by rewriting such claim with all changes (e.g, additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the

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13 Link at 633-634.

14 Inryco, Inc. v. Metropolitan Engineering Co., Inc., 708 F.2d 1225, 1233 (7th Cir. 1983). See also, Wei v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985); LeBlanc v. I.N.S., 715 F.2d 685, 694 (1st Cir. 1983).

cancellation of the previous version of that claim. A claim may also be canceled by an instruction.

(i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., "amended," "twice amended," or "new").

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., "amended," "twice amended," etc. The parenthetical expression "amended," "twice amended," etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

(3) A clean version of the entire set of pending claims may be submitted in a single amendment paper. Such a submission shall be construed as directing the cancellation of all previous versions of any pending claims. A marked up version is required only for claims being changed by the current amendment (see paragraph (c)(1)(ii) of this section). Any claim not accompanied by a marked up version will constitute an assertion that it has not been changed relative to the immediate prior version.

Application of the standard to the current facts and circumstances

In both the original and the renewed petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner contends that this mailing was never received.

In the renewed petition, petitioner submitted what was described as a docket report, which did not contain information for the relevant time period. It was set forth that "a search has been conducted, and no such back-up or paper copy is known to exist. The firm has no formal policy on maintaining such sheets, especially from so long ago[15]."

On page 6 of the decision on the renewed petition, the following was set forth:

> A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period, in order to establish that the correspondence at issue was not received, and merely misplaced and filed with another file.

On page 7 of the decision on the renewed petition, the following was written:

First, the docket print-out is not a mail log. A mail log is a record of items received. Whether a response is due or has been submitted is irrelevant to a record that accurately reflects all correspondence received during a particular time period. As such, this listing is a "to-do" list rather than a mail log, and hence, even if the record showed all relevant dates, it would not be acceptable as a record of all incoming mail.

Secondly, if entries in the record are deleted after a response is sent or if it is determined that no response is due, this negates the record's ability to confirm that an article of mail was or was not received. Once a member of the office staff deletes an entry, the record would provide to a later observer a false indication that the article of mail was never received.

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15 Renewed petition, page 5.

Petitioner also submitted copies of an index card system, which obviously was not determined to constitute a mail-log as each index card is associated with a particular file.

With the second renewed petition, Petitioner sets forth "it is noted that, in contrast to typical policies of the U.S. Patent and Trademark Office, no telephone call was apparently made to determine whether the abandonment was intentional[16]." Petitioner has not cited to any statue, rule, regulation, or portion of the MPEP which requires Examiners to extend this courtesy to applicants or provides a remedy or recourse to applicants should this situation arise.

Petitioner points out that the Examiner in charge of the application changed during prosecution, but it is not clear how this fact is germane to the abandonment of the instant application.

Petitioner states that the amendment "is not in a preferred format for amendments, not that it was inconsistent with the patent office rules. Thus, a review of the record, but for the missing correspondence, would not have revealed the status of the application[17]." 37 C.F.R. §1.121 sets forth the manner in which applicants must submit amendments. As such, the manner in which the applicant chose to submit his amendment was indeed inconsistent with patent office rules. Furthermore, an attorney who is registered to practice before the Office has a duty to keep himself up to date and aware of the rules and procedures under which this Office operates. An attorney or agent who meets this duty would have been aware of the inconsistent amendment, upon reviewing the file.

Petitioner again asserts that the index cards constitute a reliable mail log. Petitioner states that "the filing of correspondence is a separate step from, and independent of, the docketing of the correspondence. Misfiling of the correspondence would not affect, or change, the entries in the docket system[18]." As set forth in the previous decision, Petitioner's docketing system does not accurately reflect all correspondence received during a particular time period, and it cannot be relied upon to confirm whether an article of mail was or was not received, as entries can and are removed. For these reasons, petitioner's docket record is both incomplete[19] and unreliable[20].

Petitioner then writes "Thus, in contrast to the Petitions Examiner's surmise (bottom of page 6 – top of page 7), the misfiling of the document would not affect the docket card entry[21]." To buttress his argument, petitioner has submitted copies of index cards from "related cases[22]." Petitioner states that his index card entries are "distinct from a 'file wrapper maintained' docket entry[23]." As was explained in both the decision on the original petition and the decision on the renewed petition,

> A docket report is a mail log, recorded by the person who receives all incoming mail. A docket report should show all incoming mail received during the relevant time period, in order to

16 Second Renewed Petition, page 2.
17 Id.
18 Second Renewed Petition, page 3.
19 See Decision on Renewed Petition, page 6.
20 See Decision on Renewed Petition, page 7.
21 Second Renewed Petition, page 3.
22 Id.
23 Id.

establish that the correspondence at issue was not received, and merely misplaced and filed with another file.

Once again, petitioner's index cards do not constitute a mail log, since they do not show all mail that was received during a particular time period. All they show is the entries which were made that are particular to that application. If a paper was misfiled, it would not appear on the card, and it is plausible that the staff member who creates these cards placed the representative notation on the wrong card, if at all. It follows that the submission of index cards for other related cases is not convincing, as it is possible that the entry was made on a card other than one provided, or not at all.

As set forth above, it has been established that entries are at times removed from the electronic database. Petitioner has submitted declarations of fact from two employees of his firm who attest that they do not remember receiving the missing paper in 1999. Petitioner further states that it is "inconceivable that the docket entry was intentionally removed from the electronic database without a corresponding set of entries on the card, without the recollection of a person involved. Our staff recalls no such occurrence." It is plausible that an error was committed and an entry was removed from the electronic database without a corresponding entry on the index card. Furthermore, the PTO file is the official record of the papers originally filed in this application. A review of the official file reveals that the letter in question was mailed to the petitioner on June 15, 1999. An applicant alleging non-receipt of a paper has the burden of proving the allegation by a preponderance of the evidence. Petitioner has asserted that no member of his office remembers receiving a letter which was mailed to the firm on June 15, 1999. However, the memories of petitioner's staff and of the declarants of a routine mailing practice which occurred *over four years prior* is not more persuasive than the PTO file.

Petitioner next describes the Office's internal mail system, and surmises that the Office's "mail system is not infallible[24]." The Office acknowledges that the mail system can and does err. However, petitioner is reminded that the burden rests on him to establish that the delay was unavoidable[25].

The Petitioner next asserts that he his docketing system is sufficient to meet the standards of a reliable docketing system. This assertion is incorrect, due to the incompleteness and unreliability of the docketing system, as set forth above.

Finally, petitioner, underneath the heading "Public Policy", challenges the applicability of case law that has been well established for over one hundred years, without asserting that said case law has been overturned. Furthermore, the petitioner would have the Office decree that punctuality, due diligence, and good faith are not essential requisites to the success of those who seek to obtain the special privileges of patent law, and each is unnecessary to the interest of the public and for the protection of rival inventors. The Office declines this invitation.

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24 Second Renewed Petition, page 7.

25 MPEP 711.03(c)III(F).

The petition under 37 C.F.R. §1.137(b)

Regarding the petition under 37 C.F.R. §1.137(b), subsection (3) of this section of the C.F.R. 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 C.F.R. §1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 C.F.R. §1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 C.F.R. §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 the submission of an amendment, payment of the petition fee, and a statement which is being construed as the proper statement of unintentional delay. It is noted that substitute drawings were received in the Office on November 25, 2002.

Consequently, the petition is **GRANTED**.

The application file is being forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this decision should be directed to Attorney Paul Shanoski at (703) 305-0011.

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions
United States Patent and Trademark Office

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)
6519693	2003-02-11	08/897,900	1997-07-21	

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

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	/Henry C. DeBey/	Date (YYYY-MM-DD)	2007-10-23
Name	Henry C. DeBey		

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. 6519693
Issue Date: February 11,2003
Application No. 08897900
Filed: July 21,1997
Attorney Docket No. 8272-005

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

This is a decision on the electronic petition, filed October 23,2007 ,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 October 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.

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

DAVID G. AVIV
9880 VIDOR DRIVE
SUITE 303
LOS ANGELES, CA 90035

COPY MAILED

JUL 09 2008

OFFICE OF PETITIONS

In re Patent No. 6,028,626 :
Issue Date: February 22, 2000 :
Application No. 08/898470 : ON PETITION
Filed: July 22, 1997 :
Attorney Docket No. 0492/1A214 US :

This is a decision on the petition under 37 CFR 1.378(c), filed June 19, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on February 23, 2008 for failure to pay the seven and one- half 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.

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

The patent file is being forwarded to Files Repository.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

VOLPE AND KEONIG
400 ONE PENN CENTER
1617 JOHN F KENNEDY BOULEVARD
PHILADELPHIA, PA 19103

Mail Date: 04/26/2010

Applicant	: FATIH M. OZLUTURK	: DECISION ON REQUEST FOR
Patent Number	: 6075792	: RECALCULATION of PATENT
Issue Date	: 06/13/2000	: TERM ADJUSTMENT IN VIEW
Application No	: 08/898,537	: OF WYETH
Filed	: 07/22/1997	:
		:

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)
5948593	1999-09-07	08898597	1997-07-22	ID 004209 (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)	2009-01-27
Name	David J. Cushing	Registration Number	28701

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

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

In re Patent No. 5948593
Issue Date: September 7,1999
Application No. 08898597
Filed: July 22,1997
Attorney Docket No. 029430-357

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

This is a decision on the electronic petition, filed January 28,2009 ,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 January 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.

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. 5936913
Issue Date: August 10,1999
Application No. 08900242
Filed: July 24,1997
Attorney Docket No. 7017-2

:
: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)
5936913	1999-08-10	08900242	1997-07-24	

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

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 W. Erickson/	Date (YYYY-MM-DD)	2008-05-13
Name	Michael W. Erickson		
Enter Reel and Frame Number		Remove	
Reel Number	008726	Frame Number	0367
Enter Reel and Frame Number		Remove	
Reel Number	019193	Frame Number	0315
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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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.

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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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UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

KENYON & KENYON LLP
ONE BROADWAY
NEW YORK, NY 10004

COPY MAILED

MAY 0 1 2006

OFFICE OF PETITIONS

In re Application of :
Peter Pfeuffer :
Application No. 08/900,254 : ON PETITION
Filed: July 25, 1997 :
Attorney Docket No. 22750/350 :

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 28, 2006.

The petition under 37 CFR 1.181(a) is **DISMISSED AS MOOT**.

A review of the application history reveals that a Decision on Appeal was mailed in the above-cited application on January 25, 2006. It is noted that, pursuant to 37 CFR 1.304, applicants are allowed two-months from the mailing date of the decision on appeal to seek court review of the decision. Notwithstanding, the record further reflects that a Notice of Abandonment was mailed on January 31, 2006, indicating that the application was in an abandoned status for failure to timely seek court review after the dismissal of the appeal. By a communication mailed March 27, 2006, the examiner assigned to the application withdrew the Notice of Abandonment citing that the Notice of Abandonment was mailed prematurely. The instant petition was filed on March 28, 2006.

A review of Office record indicates that the abandoned status of the application has been removed as per the communication mailed March 27, 2006. Accordingly, there is no remedy that can be provided by the instant petition to withdraw the holding of abandonment. The petition is dismissed as moot, accordingly.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

The application file is being directed to Technology Center 1700, GAU 1733, for further processing.

Questions concerning this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE
MAILED
MAR 27 2002
DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2100

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 26

Birch, Stewart, Kolasch & Birch
P.O. Box 747
Falls Church, Virginia 22040-0747

In re Application of: Wells Obrecht
Application No. 08/900,360
Filed: July 25, 1997
For: METHOD AND APPARATUS FOR PRODUCING GOODS IN AN AUTOMATED MANNER

DECISION ON PETITION UNDER 37 C.F.R. § 1.181(a) TO INVOKE SUPERVISORY AUTHORITY

This is a decision on a petition, filed 3 July 2001, under 37 C.F.R. § 1.181(a) to invoke Supervisory Authority requesting the Director to reverse the Primary Examiner's holding as to the Grouping of Claims under appeal as set forth in the Examiner's Answer (mail date 7 May 2001).

OPINION

A. Reviewability of Propriety of Appeal Brief

37 C.F.R. § 1.181(a) states:

> (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 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 or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

MPEP §1206 states in relevant part:

> **REVIEW OF BRIEF BY EXAMINER**
> The question of whether a brief complies with the rule is a matter within the jurisdiction of the examiner. 37 CFR 1.192(d) provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for noncompliance

MPEP §1208 states in relevant part:

> Briefs must comply with 37 CFR 1.192, and all examiner's answers filed in response to such briefs must comply with the guidelines set forth below.
>
> (A) REQUIREMENTS FOR EXAMINER 'S ANSWER. The examiner 's answer is required to include, under appropriate headings, in the order indicated, the following items:
>
> ...
>
> (7) Grouping of Claims . A statement of whether the examiner disagrees with any statement in the brief that certain claims do not stand or fall together, and, if the

examiner disagrees, an explanation as to why those claims are not separately patentable

Care must be taken to distinguish between the following situations:

(a) No reasons supplied in Brief as to why Claims stand on their own

In this case the Brief fails to meet the requirements of 37 C.F.R. §1.192(c)(7) and a Form PTO-462 "Notification of Non-compliance with 37 C.F.R. §1.192(c)" should be issued.

(b) Reasons supplied in Brief which in examiner's view are inadequate to establish that the claims stand on their own.

The brief complies. No reference to 37 C.F.R. §1.192(c)(7) is appropriate. The Examiner may address the ***merits*** of applicant's arguments in the Answer.

DECISION

The Examiner's answer acknowledges that Applicant has separately argued the novelty of claims 2-9. However, the Examiner disagrees with the grouping, reasoning that all arguments presented for these dependent claims were specifically argued in reference to independent claim 1. This response is in accord with MPEP §1208 (A)(7).

In this instance, Applicant disagrees with Examiner's position on the grouping of claims. This is an issue in the appeal subject to the determination of the Board of Patent Appeals and Interferences. Therefore, this is not proper subject matter for petition under 37 C.F.R. § 1.181(a).

Furthermore, a review of the Examiner's Answer reveals that the examiner has responded in detail to each and every argument presented by Applicant in the Appeal Brief. Thus, despite the Examiner's statement that the claims stand and fall together, the Examiner has treated each claim as separately argued.

The petition is **DENIED**

Applicant is advised that the Reply Brief affords Applicant the opportunity for contesting the position taken by the Primary Examiner in the Examiner's Answer.

The application file is being returned to the Board of Patent Appeals and Interferences where it will await a decision.

John J. Love, Director
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce

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. 5994713
Issue Date: November 30,1999
Application No. 08900541
Filed: July 25,1997
Attorney Docket No. QIC001

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

This is a decision on the electronic petition, filed April 22,2009 ,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 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.

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)
5994713	1999-11-30	08900541	1997-07-25	QIC001

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 N. Hulsey III, Reg. No. 33402/	Date (YYYY-MM-DD)	2009-04-22
Name	William N. Hulsey III	Registration Number	33402

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

PILLSBURY WINTHROP LLP
ATTENTION: DOCKETING DEPARTMENT
11682 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130

COPY MAILED

NOV 03 2004

OFFICE OF PETITIONS

In re Application of :
Shu-Ching Cheng et al :
Application No. 08/900,559 : ON PETITION
Filed: July 25, 1997 :
Attorney Docket No. 030872.0004.RCE1 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 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)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed December 4, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 5, 2004.

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 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)). This petition lacks item (1) above.

There is no indication that corrected formal drawings as required by the Notice of Allowability of December 4, 2003 have been submitted. Accordingly, this application cannot be revived until corrected formal drawings have been submitted.

There is no indication that petitioner has submitted an Issue Fee Transmittal Form (PTOL-85b). Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Issue Fee Transmittal Form should be completed and returned to the Publishing Division within **ONE MONTH** from the mail date of this decision.

The Change of Correspondence Address filed August 12, 2004 is noted and made of record.

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

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

By hand: Customer Window located at:
U.S. Patent and Trademark Office
220 20th Street S
Customer Window, Mail Stop Petitions
Crystal Plaza Two Lobby, Room 1B03
Arlington, VA 22202

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

Pursuant to petitioner's authorization, Deposit Account No. 50-2212 was charged a total of $1,330.00 -- $665.00 for the petition to revive an unintentionally abandoned application and $665.00 for the issue fee.

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

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

Attachment: PTOL-85(b)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PILLSBURY WINTHROP
ATTENTION: DOCKETING DEPARTMENT
11682 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130

COPY MAILED

JAN 0 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Shu-Ching Cheng et al	:	
Application No. 08/900,559	:	ON PETITION
Filed: July 25, 1997	:	
Attorney Docket No. 030872.0004.RCE1	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed December 3, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The drawings filed on December 3, 2004 have been approved by the Draftsperson. A copy of the Notice of Draftsperson's Patent Drawing Review (PTO-948) is attached.

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

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

Attachment: PTO-948

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 : September 5, 2006

Patent No. :6,979,756
Inventor(s) : Cheng, Huang, et al.
Issued :December 27, 2005
Title :METODS OF USE OF ONE STEP IMMUNOCHROMATOGRAPHIC DEVICE ;FOR STREPTOCOCCUS A ANTIGEN

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 37 CFR 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 Fee(s) Transmittal Form PTOL-85B. After payment of the issue fee, correction of assignment data submitted on the PTOL-85B can only be done by Certificate of Correction under 37 CFR 1.323, with a request under 37 CFR 3.81(b).

A request for a patent to be corrected to state the name of the assignee must:

A. state that the assignment was submitted for recordation as set forth in 37 CFR 3.11 before issuance of the patent;
B. include a request for a certificate of correction under 37 CFR 1.323 along with the fee set forth in 37 CFR 1.20(a); and
C. include the processing fee set forth in 37 CFR 1.17(i).

If the request is granted, Certificates of Correction Branch will be notified that a Certificate of Correction may be issued.

See Manual of Patent Examining Procedure, Section 1481.01 (Rev. 3) (Oct. 2005).

Applicant has not included items A and or C above, accordingly, the request for Certificate of Correction to add or change the assignee data is dismissed.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

By fax: 571-273-8300
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 certificate of correction will be issued to correct the remaining errors noted in your request. Any inquiry concerning this communication should be directed to Ms. A. Green at (703) 308-9380 ext. 123.

For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 or (703) 308-9380 ext. 123

Richard D. Allison, Esq.
Genzyme Corporation
15 Pleasant St. Connector, Framingham, MA 01701

CBN/arg

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

GENZYME CORPORATION
LEGAL DEPARTMENT
15 PLEASANT ST CONNECTOR
FRAMINGHAM MA 01701-9322

MAILED

NOV 10 2009

OFFICE OF PETITIONS

In re Patent No. 6,979,576 :
Issue Date: December 27, 2005 :
Application No. 08/900,559 : NOTICE
Filed: July 25, 1997 :
Attorney Docket No. 5241 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28, filed August 10, 2009.

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.

Per the signature of registered attorney Richard D. Allison, the fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
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)
5,904,972	1999-05-18	08900687	1997-07-25	

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

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	/Gerald F. Dudding/	Date (YYYY-MM-DD)	2007-10-02
Name	Gerald F. Dudding	Registration Number	52835

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. 5904972
Issue Date: May 18,1999
Application No. 08900687
Filed: July 25,1997
Attorney Docket No. SCRMP-003CX

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

This is a decision on the electronic petition, filed October 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 October 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. 13

Richard F. Jaworski
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OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Robert David Story et al. :
Application No. 08/901,069 : ON PETITION
Filed: July 28, 1997 :
Attorney Docket No. 0655/63360 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 21, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply timely to the non-final Office action mailed March 29, 2000, which set a statutory period for reply of three (3) months. No extensions of time were pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 30, 2000.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $890 extension of time submitted with the petition on November 21, 2000 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

The application file is being forwarded to Technology Center 2700, Art Unit 2776, for further processing.

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)
5831934	1998-11-03	08901230	1997-07-24	

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 W. Erickson/	Date (YYYY-MM-DD)	2008-05-15
Name	Michael W. Erickson		
Enter Reel and Frame Number		Remove	
Reel Number	019193	Frame Number	0315
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. 5831934
Issue Date: November 3,1998
Application No. 08901230
Filed: July 24,1997
Attorney Docket No. 7017-3

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

This is a decision on the electronic petition, filed May 15,2008 ,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 15,2008 . 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)
5942811	1999-08-24	08901325	1997-07-28	

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

☐ 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	//nojensen//	Date (YYYY-MM-DD)	2008-09-16
Name	Nathan O. Jensen	Registration Number	41460

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.

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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. 5942811
Issue Date: August 24,1999
Application No. 08901325
Filed: July 28,1997
Attorney Docket No. 080394.P047

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

This is a decision on the electronic petition, filed September 16,2008 ,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 September 16,2008 . 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)
6011322	2000-01-04	08901326	1997-07-28	97SN004

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	//nojensen//	Date (YYYY-MM-DD)	2008-09-03
Name	Nathan O. Jensen	Registration Number	41460

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. 6011322
Issue Date: January 4,2000
Application No. 08901326
Filed: July 28,1997
Attorney Docket No. 080394.P045

:

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

:

This is a decision on the electronic petition, filed September 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 September 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 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. 53

KEOWN & ASSOCIATES
500 WEST CUMMINGS PARK
SUITE 1200
WOBURN, MA 01801

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FEB 17 2004

OFFICE OF PETITIONS

In re Application of
Frank et al.
Application No. 08/901,612
Filed: July 28, 1997
Attorney Docket No. HYB-014US6

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 21, 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 final Office action mailed April 10, 2002. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on July 11, 2002. A Notice of Abandonment was mailed on January 16, 2003.

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $465.00 extension of time fee submitted with the petition on July 21, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The file is now being forwarded to Technology Center 1600 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 21

STEPHEN T. SULLIVAN
5060 NORTH 40TH STREET
SUITE 120
PHOENIX, AZ 85018-2140

COPY MAILED

JUN 15 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Andrea F. Bell
Application No. 08/901,713
Filed: July 28, 1997
Attorney Docket No. 400-009

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed March 23, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 4, 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 August 5, 2000.

The above-identified application is being revived solely for purposes of continuity with a continued prosecution application (CPA) filed on March 23, 2001.

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

The application file is being forwarded to Technology Center 3700.

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
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Paper No. 28

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BLVD
7TH FL
LOS ANGELES , CA 90025

COPY MAILED

NOV 15 2000

OFFICE OF PETITIONS
AND PATENTS

In re Application of
RAKESHE BHATIA
Application No. 08/902,371
Filed: July 29, 1997
Attorney Docket No. 42390.P4624

ON PETITION

This is a decision on the petition under 37 CFR 1.182 filed August 22, 2000, requesting that the abandonment of the above-identified application be rescinded.

The petition is GRANTED.

A Notice of Abandonment was mailed on July 28, 2000, stating that the application was abandoned for failure to respond to the Notice of Allowance and Issue Fee Due mailed April 3, 2000. However, a review of the record discloses that a proper continued prosecution application (CPA) was filed prior to the July 3, 2000 due date for payment of the issue fee. Consequently, the prior application was not abandoned as a result of a failure to pay the issue fee.

The Notice of Abandonment mailed July 28, 2000, is hereby vacated. Since the petition was a result of PTO error, the $130.00 petition fee is being refunded to counsel's deposit account.

Receipt is acknowledged of the issue fee paid on October 10, 2000 in response to the Notice of Allowance and Issue Fee Due mailed July 18, 2000 in the CPA filed June 14, 2000. Accordingly, the application is being forwarded to the Office of Patent Publication to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-9220.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : **AUGUST 10, 2007**

TO SPE OF : ART UNIT **2823**

SUBJECT : Request for Certificate of Correction for Appl. No.: **08/902,470** Patent No.: **6060339**

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.

[redacted]

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

LAMONTE NEWSOME
Certificates of Correction Branch
703-308-9390 ext. 112
FAX 571-270-9990 c/o

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: Changes are approved.

[signature] 2823
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

BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS TX 75201-2980

MAILED

SEP 22 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application
DUMESNY, ALAIN M., et al
Serial No.: **08/903,440**
Filed: July 30, 1997
For: **MAPPING TEXTURES ONTO 3D GRAPHIC OBJECTS BY MANIPULATING GRAPHICAL INDICATORS**

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.84(b)(2), filed, November 19, 1999, requesting acceptance of color drawings.

The petition requests that the color drawings identified in Figures 1, 2, 3A-3H, 4, 5A-5D, 6A-6C, 7, 8A-8C, 9A, 9B, 10, 11A, 11B, 12A, 12B, 13A, 13B, 14, 15A, 15B, 16A-16E, and 17A-17J, be accepted in lieu of black and white drawing

A grantable petition under 37 C.F.R. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3(three) set of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition was filed without the 3(three) set of the color drawings in question in the paragraph above.

The petition is **DENIED.**

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and include correction of the deficiency outlined above. The application will be held in the Technology Center for two months to await any request for reconsideration of this decision.

Doris To
Special Program Examiner
Technology Center 2600
Communications

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

KARL G HANSON
3M OFFICE OF INTELLECTUAL PROPERTY
COUNSEL
P O BOX 33427
ST PAUL MN 55133-3427

COPY MAILED

DEC 14 2001

OFFICE OF PETITIONS

In re Application of
Carl E. Hanson
Application No. 08/903,677
Filed: July 31, 1997
Title: METHOD OF TREATING CHEST PAIN

DECISION ON PETITION

This is a decision on the petition filed on October 30, 2001, 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 a response in accordance with 37 CFR 1.196(b) to the Decision of the Board of Patent Appeals and Interferences, mailed July 17, 2001. This decision set a period for reply of two (2) months. Extensions of time under the provisions of 37 CFR 1.136(a) were not available. Accordingly, the above-identified application became abandoned on September 18, 2001. A Notice of Abandonment was mailed on September 18, 2001.

The petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted a reply in the form of a Continued Prosecution Application (CPA), paid the petition fee, and made the proper statement of unintentional delay.

The application file is being forwarded to Technology Center 3700 for consideration of petitioner's CPA, filed October 30, 2001.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

Christina Tartera Donnell for

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
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Paper No. 20

KARL G HANSON
3M OFFICE OF INTELLECTUAL PROPERTY
COUNSEL
P O BOX 33427
ST PAUL MN 55133-3427

COPY MAILED

DEC 14 2001

OFFICE OF PETITIONS

In re Application of :
Carl E. Hanson :
Application No. 08/903,677 : DECISION ON PETITION
Filed: July 31, 1997 :
Title: METHOD OF TREATING CHEST PAIN :

This is a decision on the petition filed on October 30, 2001, 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 a response in accordance with 37 CFR 1.196(b) to the Decision of the Board of Patent Appeals and Interferences, mailed July 17, 2001. This decision set a period for reply of two (2) months. Extensions of time under the provisions of 37 CFR 1.136(a) were not available. Accordingly, the above-identified application became abandoned on September 18, 2001. A Notice of Abandonment was mailed on September 18, 2001.

The petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted a reply in the form of a Continued Prosecution Application (CPA), paid the petition fee, and made the proper statement of unintentional delay.

The application file is being forwarded to Technology Center 3700 for consideration of petitioner's CPA, filed October 30, 2001.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

Christina Tartera Donnell for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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ALEXANDRIA, VA 22313-1450
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MAY 30 2007

OFFICE OF PETITIONS

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

In re Patent No. 7,119,262 : DECISION UNDER 37 CFR
Issued: October 10, 2006 : 1.705(d)
Application No. 08/903,944 :
Filed: July 31, 1997 :
Atty. Dkt. No.: 089166/0107 :

This is a decision on the "Request for Reconsideration of Patent Term Adjustment," filed November 7, 2006. This matter is being properly treated under 37 CFR 1.705(d) as an application for patent term adjustment.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 7,119,262 on October 10, 2006. The instant request for reconsideration was timely filed November 7, 2006 in accordance with 37 CFR 1.705(d). The patent issued with a PTA of 519 days. Patentees argue that the patent is entitled to an adjustment of 923 days.

At the time of issuance, the adjustment totaling 1,047 days was reduced 528 days for applicants' failure to engage in reasonable efforts to conclude prosecution or processing.

Patentees contest the reduction of 35 days. The adjustment, however, was properly reduced 35 days in accordance with 37 CFR 1.704(c)(10) in connection with the drawing submitted September 6, 2006. Submission of an amendment under 37 CFR 1.312 or other paper, including drawings, after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. *See, Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance has been Mailed*, 1247 Off. Gaz. Pat. Office 111 (June 26, 2001). *See, also*, MPEP 2732.

Accordingly, the reduction in connection with the drawing began September 6, 2006, the date the drawings submitted, and ended October 10, 2006, the date the patent issued.

Patentees further raise the issue of adjustments and/or reductions that occurred prior to the mailing of the Notice of Allowance. Patentees are reminded that any request for reconsideration under 37 CFR 1.705 that raises issues that were raised, or could have been raised, in an application for patent term adjustment under 37 CFR 1.705(b) shall be dismissed as untimely as to those issues. Accordingly, reconsideration of adjustments and/or reductions that occurred prior to the mailing of the Notice of Allowance is dismissed.

In view thereof, the patent is entitled to an overall adjustment of 519 days, as indicated on the patent.

The Office hereby acknowledges receipt of the required patent term adjustment application fee of $200.00.

Any request for reconsideration of this decision must be submitted within TWO MONTHS of the mail date of the instant decision indicated above. Extensions under 37 CFR 1.136 will not be permitted.

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

Kery A. Fries

Kery Fries
Senior Patent Attorney
Office of Patent Legal Administration
Office of 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. 42

WAYNE J. COLTON, INC.
THE MILAM BUILDING SUITE 1032
115 EAST TRAVIS STREET
SAN ANTONIO, TX 78205

COPY MAILED

AUG 0 8 2002

OFFICE OF PETITIONS

In re Application of
John H. Vrzalik
Application No. 08/904,121
Filed: July 31, 1997
Attorney Docket No. 1001.1020

ON PETITION

This is a decision on the petition, filed April 22, 2002 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed August 2, 2000. A shortened statutory period of three months was set for replying to the final Office Action. A Notice of Appeal was filed November 6, 2000. In response, an Office Communication was mailed on November 20, 2000 stating that the Notice of Appeal was not acceptable because the appeal fee required under 37 CFR 1.17(b) was not filed due to insufficient funds in Deposit Account No. 50-0489. Another Notice of Appeal with a two-month Extension of Time was filed January 9, 2001. Since no Appeal Brief was filed, this application became abandoned on March 10, 2001. Accordingly, a Notice of Abandonment was mailed August 22, 2001.

Petitioner has submitted a Continued Prosecution Application (CPA) with the present 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), which may be 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(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 Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) in a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995.

This application is being forwarded toTechnology Center 3600 for processing of the CPA.

Telephone inquiries concerning this matter may be directed to Doris To at (703) 305-4066 or to the undersigned Petitions Attorney in the Office of Petitions at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior 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
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PAUL L BROWN
EMRICH AND DITHMAR
SUITE 3000
300 SOUTH WACKER DRIVE
CHICAGO IL 60606

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JUN 26 2006

OFFICE OF PETITIONS

In re Application of
Robert M. Lundberg.
Application No. 08/904,299
Filed: July 31, 1997
Attorney Docket No: 101AB

ON PETITION

This is a decision on the petition filed February 25, 2002 by facsimile transmission and followed up with hard copy March 11, 2002 filed by first class mail. The petition seeks to have the abandonment withdrawn and is thus treated under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on October 28, 2001, for failure to file a timely response to the Final Office Action mailed July 27, 2001, which set a three (3) month statutory period for reply. The instant petition and this decision precede the mailing of the Notice of Abandonment.

Petitioner asserts that the Final Office Action was never received.

Although, all documents filed by the applicant always listed the correspondence address as PAUL L BROWN, EMRICH AND DITHMAR, SUITE 3000, 300 SOUTH WACKER DRIVE, CHICAGO, IL 60606, a data entry error on the part of the USPTO entered the address with a suite number of "300" instead of "3000". And, although all correspondence from the USPTO to the applicants always bore an incorrect suite number, applicants always seemed to receive the mail even with the incorrect address on it. However, petitioners should not have to bear the brunt of the errors caused by the USPTO and thus, in view of the facts set forth in the petition, it is concluded that the Office Action was incorrectly addressed and never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

The address has been corrected to include the correct suite number.

This matter is being referred to Technology Center 3747 for a re-mailing of the Final Office Action and for a restarting of the period for response.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091130

DATE : November 30, 2009

TO SPE OF : ART UNIT 2878

SUBJECT : Request for Certificate of Correction on Patent No.: 6053615

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

SPE: Georgia Y. Epps **Art Unit** 2878

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)
5,990,131	1999-11-23	08/904,461	1997-08-01	23134-X

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	/Sander Rabin/	Date (YYYY-MM-DD)	2008-02-06
Name	Sander Rabin	Registration Number	53498

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
www.uspto.gov

In re Patent No. 5990131
Issue Date: November 23,1999
Application No. 08904461
Filed: August 1,1997
Attorney Docket No. 23134-X

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

This is a decision on the electronic petition, filed February 6,2008 ,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 February 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.

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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DRW Mar-06

GREGORY F. WIRZBICKI
UNION OIL COMPANY OF CALIFORNIA
PATENT DEPARTMENT
PO BOX 7600
BREA CA 92822-7600

COPY MAILED

MAR 0 3 2006

OFFICE OF PETITIONS

In re Patent No. 5,837,126	:	
Issued: 17 November, 1998	:	
Application No. 08/904,594	:	ON PETITION
Filed: 1 August, 1997	:	
For: GASOLINE FUEL	:	

This is a decision on the petition under 37 CFR 1.182, filed on 14 December, 2005, requesting the issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

Since it is U.S. Patent and Trademark Office practice to assure mailing of all papers on the date indicated, there is a strong presumption that papers duly addressed and indicated as mailed, such as the Letters Patent in this application, are timely delivered to the addressee. To overcome this presumption, a verified statement with supporting evidence, such as any records which would disclose the receipt of other correspondence mailed from the U.S. Patent and Trademark Office on or about 8 July, 2003, but fail to disclose receipt of the Letters Patent mailed on that date, should be promptly submitted. Further, copies of records on which receipt of the Letters Patent would have been entered had it been received are required.

However, if the loss of the Letters Patent was not the fault of the U.S. Patent and Trademark Office or if petitioner simply wishes to avoid overcoming the above-noted presumption, a petition may be filed under 37 CFR 1.182 accompanied by a petition fee of $400.00 requesting a duplicate Letters Patent. Upon receipt of the petition and petition fee, the request for a duplicate Letters Patent will be granted.

Petitioners state that the original Letters Patent has been lost and have enclosed the required fee.

The address on the petition is different than the address of record. A courtesy copy of this decision will be mailed to the address listed on the petition. All future correspondence will be mailed solely to the address of record. If petitioners desire to change the correspondence address, the enclosed change of correspondence form should be completed. If the form is signed on behalf of an assignee, a statement under 37 CFR 3.73(b) must also be completed.

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Petitions Attorney
Office of Petitions

cc: Krystal Paige, South Tower 8C32 (FAX 571-273-9756)

cf: WILLIAM K. TURNER
ASSISTANT SECRETARY FOR UNION OIL COMPANY OF CALIFORNIA
CHEVRON CORPORATION
6001 BOLLINGER CANYON ROAD
BUILDING T, THIRD FLOOR
SAN RAMON CA 94583

Encl: PTO/SB/96
PTO/SB/123

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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PROSKAUER ROSE LLP
ONE INTERNATIONAL PLACE 14TH FL
BOSTON MA 02110

COPY MAILED

AUG 16 2006

OFFICE OF PETITIONS

In re Patent No. 5,886,315 :
Issued: March 23, 1999 :
Application No. 08/904,694 : ON PETITION
Filed: August 1, 1997 :
Attorney Docket No. HYP-039(4527 :

This is in response to the paper filed March 17, 2006 under 37 CFR 1.27(g)(2) requesting that status as a Small Entity be removed.

In accordance with the March 17, 2006 request, the request is **GRANTED** and status as a Small Entity has been removed.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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)
6218846	2001-04-17	08904789	1997-08-01	WPI97-01

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			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	/Marlo M. Schepper/	Date (YYYY-MM-DD)	2009-09-23
Name	Marlo M. Schepper	Registration Number	57194

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. 6218846
Issue Date: April 17,2001
Application No. 08904789
Filed: August 1,1997
Attorney Docket No. WPI97-01

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

This is a decision on the electronic petition, filed September 23,2009 ,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 September 23,2009 . 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)
5924617	1999-07-20	08904798	1997-08-01	ALW-111US

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	/Molly Hogan McKinley/	Date (YYYY-MM-DD)	2009-07-09
Name	Molly Hogan McKinley	Registration Number	59581

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. 5924617
Issue Date: July 20,1999
Application No. 08904798
Filed: August 1,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed July 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 July 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. 7

JOHN F MORAN
OFFICE OF COMMAND JUDGE ADVOCATE
HQ USAMRDC
DEPARTMENT OF THE ARMY FORT DETRICK
FREDERICK, MD 21702-5012

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JUN 0 8 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Frederick Cassels et al. :
Application No. 08/905,046 : ON PETITION
Filed: August 1, 1997 :
Attorney Docket No. :

This is a decision on the petition under 37 CFR 1.137(b), filed May 18, 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 June 12, 1998, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 13, 1998.

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

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

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

cc: GLENNA HENDRICKS
P.O. BOX 2509
FAIRFAX, VA 22031

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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SMITH, GAMBRELL & RUSSELL, LLP
1850 M STREET, N.W., SUITE 800
WASHINGTON DC 20036

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OFFICE OF PETITIONS

In re Application of :
Frederick Cassels et al :
Application No. 08/905,046 : ON PETITION
Filed: August 1, 1997 :
Attorney Docket No. 034047.037(WRAIR 95-10) :

This is a decision on the petition under 37 CFR 1.137(b), filed June 10, 2004, and supplemented on September 10, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed March 12, 2001, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 13, 2001.

Since petitioner has not submitted an Issue Fee Transmittal Form (PTOL-85(b), the attached blank Issue Fee Transmittal Form should be completed and returned to the Publishing Division within **ONE MONTH** from the mail date of this decision.

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

The application file is being forwarded to Patent Publication.

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

Attachments: Blank PTOL-85(b) Issue Fee Transmittal Form
Copy of Notice of Allowance and Issue Fee Due Mailed 3/12/01

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 28

ROBERT C. NABINGER
FISH & RICHARDSON P.C.
225 FRANKLIN STREET
BOSTON, MA 02110-2804

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OCT 3 1 2000

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Rochard E. Durkot et al :
Application No. 08/905,254 : ON PETITION
Filed: August 1, 1997 :
Attorney Docket No. 08935-018001 :

This is a decision on the petition, filed by facsimile on October 30, 2000, under 37 CFR 1.313(c)(3) 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 in favor of a continued prosecution application (CPA) under 37 CFR 1.53(d).

Petitioner is advised that the issue fee paid on September 5, 2000 in the parent application is not refundable nor can it be applied towards any new Notice of Allowance which may issue on the CPA filed October 30, 2000.

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

The application is being forwarded to Technology Center 1700 for processing of the CPA.

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
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Paper No. 22

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SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

MARLA J. MATHIAS
BRISTOL-MYERS SQUIBB COMPANY
P.O. BOX 4000
PRINCETON, NJ 08543

In re Application of
Rosok et al.
Application No. 08/905,293
Filed: August 1, 1997
Attorney Docket No. ON0146A

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 8, 2000 and supplemented on June 1, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed August 31, 1999 which set a shortened statutory period for reply of three (3) months. Petitioners filed a request for reconsideration and obtained a three month extension of time under the provisions of 37 CFR 1.136(a) on March 6, 2000 (certificate of mailing February 28, 2000). However, as stated in the Advisory Action of April 10, 2000, the reconsideration did not *prima facie* place this application in condition for allowance. Accordingly, the above-identified application became abandoned on March 1, 2000. A Notice of Abandonment was mailed on April 17, 2000.

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.

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. Because 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 petitioners must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The Power of Attorney, filed May 8, 2000 and supplemented on June 1, 2000 by an authorized representative of the assignee intervening under the provisions of 37 CFR 3.73(b), has been accepted and made of record. All future communications pertaining to this application will be mailed to the new correspondence address of record, which is identified above.

Pursuant to petitioners' authorization, Deposit Account No. 19-3880 was charged $1,210.00 for filing a petition to revive under an unintentional standard and $300.00 for filing a Notice of Appeal.

Telephone inquiries concerning this decision should be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

The application file is being forwarded to Technology Center 1600 for further processing.

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

#23

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO..
08/905,293	August 1, 1997	ROSOK	ON0146A

MERCHANT GOULD SMITH EDELL WELTER & SCHMIDT
WESTWOOD GATEWAY SUITE 400
1150 SANTA MONICA BLVD
LOS ANGELES CA 90025
ATLANTA, GA 30309

DATE MAILED: JUN 21 2000

This is in response to the Power of Attorney filed May 8, 2000 and supplemented on June 1, 2000.

☐ 1. The power of Attorney to you in this application **has been revoked** by the applicant. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

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

☐ 3. 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 1. The power of Attorney to you in this application **has been revoked** by the applicant. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

☒ 4. The power of attorney in this application **is accepted**. Correspondence in this application will be mailed to the below-noted address as provided by 37 CFR 1.33.

☐ 5. The Power of Attorney in this application **is not accepted** for the reason(s) checked below:

- ☐ a. The Power of Attorney is from an assignee and the Certificate required by 37 CFR 3.73 (b) has not been received.
- ☐ b. The person signing for the assignee has omitted their empowerment to sign on behalf of the assignee.
- ☐ c. The inventor(s) is without authority to appoint attorneys since the assignee has intervened as provided by 37 CFR 3.71.
- ☐ d. The signature of _____, a co-inventor in this application, has been omitted. The Power of Attorney will be entered upon receipt of confirmation signed by said co-inventor.
- ☐ e. The person(s) appointed in the Power of Attorney is not registered to practice before the U.S. Patent & Trademark Office.
- ☐ f. The revocation is not signed by the applicant, the assignee of the entire interest, or one particular principal attorney having the authority to revoke.

Beverly M. Flanagan
Office of Petitions, (703) 305-9282

MARLA J MATHIAS
BRISTOL-MYERS SQUIBB COMPANY
P.O. BOX 4000
PRINCETON NJ 08543

RETAIN THIS COPY IN THE APPLICATION FILE

COPY A

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.

FISH & NEAVE IP GROUP
ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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FEB 24 2005

OFFICE OF PETITIONS

In re Application of
Ingham, P., et al.
Application No. 08/905,572
Filed: August 1, 1997

: Three
: Week
: Letter

A petition for access under 37 CFR 1.14 was filed by Brad Buehler for access to the above-identified application on February 8, 2005 with evidence that it was originally filed November 16, 2004.

The petition was filed with proof of service upon applicant. Accordingly, a copy of the petition papers filed February 8, 2005 is not enclosed with this letter.

The petition requests access to the above referenced application based upon the reference to the above-identified application in the file history of eight identified applications. The petition states that access is necessary to determine the scope of the claims in U.S. Patent Nos. 6,610,656 and 6,630,148.

Petitioner also states access should be granted pursuant to 37 CFR 1.14(a)(vi). In support thereof petitioner refers to references to the above-identified application in eight patent or publication files but did not provide a copy of the referencing document.

Access to an unpublished application may be granted if "special circumstances" are shown which warrant a grant of access under 35 U.S.C. § 122. See Manual of Patent Examining Procedure (MPEP), Section 103, and 37 CFR 1.14(h).

Applicants are hereby given THREE WEEKS from the date of this letter to file a response to this letter. If applicants fail to respond within the three week period, petitioner may be allowed access to the entire application. See MPEP Section 103.

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

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia

By FAX: (703) 872-9306
Attn: Office Patent Legal Administration/Michael L. Lewis

Telephone inquiries should be directed to Michael L. Lewis at (571) 272-7755.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Brad Buehler
1700 Diagonal Road
Suite 450
Alexandria, VA. 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 29

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CAMBRIDGE MA 02139

MAIL

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
William T. Freeman, et al.
Application No. 08/906,493
Filed: August 5, 1997
For: **VIDEO RECORDING DEVICE RESPONSIVE TO TRIGGERING EVENT**

DECISION ON PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment filed September 10, 2004, pursuant to MPEP §711.03(c) and 37 C.F.R. § 1.181(a). No fee is required.

The application was held abandoned for failure to respond in a timely manner and effective manner to the Notice of Non-Compliance mailed December 11, 2003, i.e., in reference to Appellant's brief. A Notice of Abandonment was mailed June 29, 2004.

Petitioner alleges to have timely filed a response to said Notice of Non-Compliance, on November 12, 2002. In support thereof, Petitioner provided evidence in the way of a copy of the response to the Notice of Non-Compliance, a copy of the Transmittal form, a copy of a substitute Appeal Brief and a date stamped post card receipt which itemizes the receipt of each of the above items on November 12, 2002.

A review of the file records reveals that the original response and substitute Appeal Brief filed on November 12, 2002 has been located and matched with the file. Therefore, it is concluded that the papers were timely filed in compliance with the requirements of 37 CFR 1.8(a)(1).

In view of the above stated reason, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Any inconvenience caused petitioner is regretted.

The petition is **GRANTED.**

The application file is being forwarded to the Technology Center's technical support staff for crediting Applicant's deposit account for the petition fee as there is no petition fee due for this type of petition. From there, the file will be forwarded to the examiner for further action in due course.

Dwayne D. 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
www.uspto.gov

In re Patent No. 6016331
Issue Date: January 18,2000
Application No. 08906531
Filed: August 5,1997
Attorney Docket No. VL5-014

:
: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.

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)
6016331	2000-01-18	08906531	1997-08-05	A 050772US

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.**

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)
6,153,795	2000-11-28	08906622	1997-08-07	

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	/Thelma G. Cromwell-Moss/	Date (YYYY-MM-DD)	2010-06-04
Name	Thelma Grace Cromwell-Moss		

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:

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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. 6153795
Issue Date: November 28,2000
Application No. 08906622
Filed: August 7,1997
Attorney Docket No. 005-828-300

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

This is a decision on the electronic petition, filed June 15,2010 ,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 June 15,2010 . 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)
6344785	2002-02-05	08906952	1997-08-06	HALO 100-5

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	/Peter J. Su/	Date (YYYY-MM-DD)	2006-12-06
Name	Peter J. Su	Registration Number	43939

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.

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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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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. 6344785
Issue Date: February 5,2002
Application No. 08906952
Filed: August 6,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed December 6,2006 ,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 December 6,2006 . 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)
5884284	1999-03-16	08906962	1997-08-06	MEDO 1434C PUS

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	/Stephanie M. Mansfield/	Date (YYYY-MM-DD)	2007-11-02
Name	Stephanie M. Mansfield	Registration Number	43773

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. 5884284
Issue Date: March 16,1999
Application No. 08906962
Filed: August 6,1997
Attorney Docket No. 235140

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

This is a decision on the electronic petition, filed November 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 November 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. 19

FISH & RICHARDSON P.C.
4350 LA JOLLA VILLAGE DRIVE,
SUITE 500
SAN DIEGO, CA 92122

COPY MAILED

JUN 0 6 2001

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Yamazaki et al :
Application No. 08/907,182 : ON PETITION
Filed: August 6, 1997 :
Attorney Docket No. 07977/023002 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 21, 2000, to revive the above-identified application.

The petition is **Granted**.

The above-identified application became abandoned for failure to timely pay the issue fee. 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. See MPEP711.03(c)(III)(A)(1). Therefore, the filing of a Request For Continued Examination (RCE) is not a proper reply. However, upon payment of the issue fee, the filing of an RCE with submission is proper to continue prosecution of the application pursuant to 37 CFR 1.114. Therefore, in view of the authorization contained in the petition to charge any additional fees due, the $1210 issue fee will be charged to Deposit Account No. 06-1050.

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.

This application is being forwarded to Technology Center 1700 for processing of the request for continued examination under 37 CFR 1.114.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-8859.

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

In re Patent No. 6136212
Issue Date: October 24,2000
Application No. 08907184
Filed: August 6,1997
Attorney Docket No. UM-02919

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

This is a decision on the electronic petition, filed October 5,2009 ,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 October 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)
6,136,212	2000-10-24	08/907,184	1997-08-06	NASS-0018

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 B. Hoffman/	Date (YYYY-MM-DD)	2009-10-05
Name	David B. Hoffman	Registration Number	62835

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.

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 7/26/06 **Paper No.:**

TO : **Supervisor, Art Unit** _____

SUBJECT : Certificate of Correction Request in Patent No.: 6,853,378

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.

PLEASE COMPLETE THIS FORM AND
RETURN WITH FILE, WITHIN 7 DAYS,
TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922
PALM LOCATION 7580 - TEL. N0. 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: The request for a Certificate of Correction with respect to the continued prosecution application and twenty year term is not approved, as the application was filed after June 8, 1995.**

Mark Polutta
Office of Patent Legal Administration **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

Date Mailed : February 16, 2006

Patent No. :6,853,378 B2
Patent Issued : February 8, 2005
Inventor(s) : Miyuki Enokida, et al.
Title: MOVING IMAGE EDITING APPARATUS AND MOVING IMAGE EDITING METHOD USING INTRAFRAME ENCODING

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.

The request for a Certificate of Correction with the respect to the continued prosecution application and twenty-year term is not approved, as the application was filed after June 8, 1995.

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

A certificate of correction will issue for the remaining errors noted in your request.

Magdalene Talley
For Cecelia B. Newman, Supervisor
Decision and Certificate
Of Correction Branch
(703)308-9390 ext. 116
Fax (571) –270-9942

Fitzpatrick, Cella, Harper & Scinto
30 Rockefeller Plaza
New York, NY 10112-3801

CBN/mt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 09/03/05

TO SPE OF : ART UNIT 2625

SUBJECT : Request for Certificate of Correction on Patent No.: 08/907957 6903832

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.

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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:

KING Y. POON
SUPERVISORY PATENT EXAMINER

SPE 2625 **Art Unit**

OK, please enter
dlt (08/23/07)

Copy

OIPE JC139 AUG 22 2005 PATENT & TRADEMARK OFFICE

03500.012240.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of:	
SHINICHIRO MAEKAWA et al.	Examiner: D. Tran
Appl. No.: 08/907,957	Group Art Unit: 2624
Filed: August 11, 1997	
For: OUTPUT CONTROL APPARATUS, OUTPUT CONTROL METHOD AND MEMORY MEDIUM STORING PROGRAM READABLE BY COMPUTER	Certificate AUG 2 6 2005 of Correction
U.S. Patent No.: 6,903,832 B2	
Issued: June 7, 2005	August 19, 2005

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

REQUEST FOR CERTIFICATE OF CORRECTION
UNDER RULES 322 AND 323

Sir:

It is respectfully requested that a Certificate of Correction be issued by the Patent and Trademark Office due to errors which appear in the printed patent as a result of Patent and Trademark Office mistakes, and mistakes of a clerical, typographical, or minor character, which were not the fault of the Patent and Trademark Office. A Certificate of Correction form, in duplicate, is enclosed.

Accompanying this letter is a check for $100.00 to cover the statutory fee for such Certificate of Correction.

08/23/2005 SSITHIB1 00000006 6903832
01 FC:1811 100.00 OP

AUG 2 6 2005

Patentees' undersigned attorney may be reached in our Costa Mesa, CA office at (714) 540-8700. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

Frank L. Cire
Attorney for Patentees
Registration No. 42,419

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
Facsimile: (212) 218-2200

CA_MAIN 100740v1

AUG 2 6 2005

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,903,832 B2

DATED : June 7, 2005

INVENTOR(S) : Maekawa et al.

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

ABSTRACT:
Line 4, "includes detection means" should read – includes a detection unit --;
Line 6, "unit, and transmission means" should read – unit via an interface unit, and a transmission unit --; and
Line 8, "means" should read – unit --.

DRAWINGS:
Sheet 4, FIG. 5, "DAT" should read – DATA --;
Sheet 5, FIG. 6, "SHET" should read – SHEET --, and "ABCENCE" (both occurrences) should read -- ABSENCE --; and
Sheet 6, FIG. 7, "ANALISIS" should read -- ANALYSIS --.

COLUMN 5:
Line 36, "bit;" should read -- bit. --.

COLUMN 10:
Line 65, "palling" should read -- polling --.

CA_MAIN 100738v1

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 6,903,832 B2

No. of add'l. copies @ 30¢ per page

Form PTO 1050 (Rev. 3-82)
(Form#30)

AUG 2 6 2005

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,903,832 B2

DATED : June 7, 2005

INVENTOR(S) : Maekawa et al.

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Sheet 5, FIG. 6, "SHET" should read – SHEET --, and "ABCENCE" (both occurrences) should read -- ABSENCE --; and
Sheet 6, FIG. 7, "ANALISIS" should read -- ANALYSIS --.

COLUMN 5:
Line 36, "bit;" should read -- bit. --.

COLUMN 10:
Line 65, "palling" should read -- polling --.

CA_MAIN 100738v1

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3800
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. 6,903,832 B2

No. of add'l. copies @ 30¢ per page

Form PTO 1050 (Rev. 3-82)
(Form#30)

AUG 2 6 2005

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. 6067978
Issue Date: May 30,2000
Application No. 08908408
Filed: August 7,1997
Attorney Docket No. 217-P-571

:
: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 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 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.

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)
6067978	2000-05-30	08908408	1997-08-07	217-P-571

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	/ David I. Roche /	Date (YYYY-MM-DD)	2008-07-22
Name	David I. ROCHE	Registration Number	30797

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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P.O. Box 1450
Alexandria, VA 22313-1450
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JAN 14 2005

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON MA 02110

In re Application of	:
Gary Ruvkun et al	:
Serial No.: 08/908,453	: PETITION DECISION
Filed: August 7, 1997	:
Attorney Docket No.: 08472/704002	:

This is in response to the petition under 37 CFR 1.181, filed October 14, 2004, requesting withdrawal of the Final Office action.

BACKGROUND

A review of the file history shows that the examiner mailed a Final Office action to applicants on June 10, 2003, and remailed the Office action, resetting the three month shortened statutory period for reply, on July 8, 2003. Applicants replied to this Office action on November 12, 2003, with an argument with respect to the outstanding rejections. It appears that no Advisory Action in response to the reply was mailed by the examiner to applicants. Applicants filed a Notice of Appeal on December 30, 2003. Applicants then filed a new reply to the Office action on June 4, 2004, accompanied by an Appeal Brief. A Notice of Defective Appeal Brief was mailed to applicants on September 9, 2004, and a new Appeal Brief was filed on October 14, 2004, accompanied by the instant petition.

DISCUSSION

The Final Office action remailed July 8, 2003, was in reply to a first Appeal Brief filed November 13, 2002. The Final Office action contains a new ground of rejection based on Swinburne et al provided in an IDS filed by applicants on August 15, 2002. Applicants reply to the Final Office action filed November 12, 2003, responds to the rejection, but makes no mention of the finality of the Office action being premature. Applicants' Notice of Appeal, filed December 30, 2003, makes no mention of the Final Office action being premature. On June 4, in a supplemental reply to the Office action mailed 11 months earlier, applicants first raise the issue of the Final Office action being premature, concurrently with the filing of an Appeal Brief. The reply is not in the form of a petition. The Appeal Brief also contains an argument that the finality of the rejection is premature.

The Appeal Brief was held to be non-compliant in a letter mailed to applicants on September 9, 2004. On October 14, a new Appeal Brief was filed and this petition. The petition states that a

procedural error has occurred in that the finality of the Office action of July 8, 2003 was premature in that the rejection was based on a reference supplied in an IDS by applicants under 37 CFR 1.97(d) and (e). The examiner in the Office action stated that the reference being applied was filed under 37 CFR 1.97(c). 37 CFR 1.97(c) notes that an IDS filed after close of prosecution (e.g. by Final Office action, allowance, etc.,) will not be considered unless accompanied by a fee and a statement specified by 37 CFR 1.97(e). **37 CFR 1.97(d) relates to consideration of an IDS filed after a Notice of Allowance and before the payment of the Issue Fee.** As this application has never been allowed and No Notice of Allowance and Issue Fee Due has been mailed, 37 CFR 1.97(d) does not apply. It is clear, however, that 37 CFR 1.97(c) does apply in that the IDS, while initially filed during a time when prosecution was closed in the application, the withdrawal of the finality of a previous Final Office action, as stated in the first part of the Office action of July 8, 2003, permitted the reference to become available under 37 CFR 1.97(c). In view thereof the finality of the Office action of July 8, 2003, was not premature. (It is also noted that the proposed rejection was discussed telephonically with applicants by the examiner prior to the Office action issuing.)

Further, a request to withdraw an improper Office action by an examiner under 37 CFR 1.181 must be filed within two months of the action complained of (37 CFR 1.181(f)). Such appears not to be the case here. The request to have the Final Office action withdrawn was not made in the response filed November 12, 2004, as it should have been, but appears to have first been filed almost eight months after that response and six months after filing a Notice of Appeal and is untimely.

The petition is **DENIED** for all of the above reasons.

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

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.

Jasemine C. Chambers
Director, Technology Center 1600

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NOV 18 2009

Jeffrey P. Kushan
Sidley Austin, LLP
1501 K Street, N.W.
Washington, DC 20005

Re: Patent Term Extension
Application for
U.S. Patent No. 6,884,879

WITHDRAWAL OF APPLICATION FOR PATENT TERM EXTENSION

This is in response to the "Election Under 37 C.F.R. § 1.785(b)" filed April 24, 2009, of the application for patent term extension for U.S. Patent No. 6,407,213, (LUCENTIS® (ranibizumab)). The present application for patent term extension for U.S. Patent No. 6,884,879 is withdrawn in favor of the elected patent, U.S. Patent No. 6,407,213.

The present application is hereby withdrawn from consideration and 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

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: LUCENTIS® (ranibizumab)
FDA Docket No.: FDA-2007-E-0165

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. 5954664
Issue Date: September 21,1999
Application No. 08908543
Filed: August 7,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed December 24,2007 ,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 December 24,2007. 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)
5954664	1999-09-21	08908543	1997-08-07	

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	/000075709RDSEEGOBIN/	Date (YYYY-MM-DD)	2007-12-24
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.**

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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ALEXANDRIA, VA 22313-1450
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Paper No. 22

COMMANDING OFFICER
LEGAL COUNSEL FOR PATENTS CODE 0012
NCCOSC RDTE DIV
53510 SILVERGATE AVENUE RM 103
SAN DIEGO CA 92152-5765

MAIL

MAR 24 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Richard Scheps
Application Serial No.: 08/908,778
Filed: August 7, 1997
For: HIGH RESOLUTION IMAGING LIDAR FOR DETECTING SUBMERGED OBJECTS

DECISION ON PETITION

This is a decision on the petition filed August 29, 2003 under 37 C.F.R. § 1.181(a) to withdraw the holding of abandonment. No fee is required.

The application was held abandoned because the Board of Patent Appeals and Interferences rendered its decision on January 23, 2003, the time period for seeking court review of the decision had expired and there were no allowed claims, according to the Notice of Abandonment mailed on July 14, 2003.

Petitioner alleges procedures after the Board of Patent Appeals and Interference's decision was not properly carried out and the one month time period mentioned by the examiner within a telephone interview, was not appropriately applied.

A review of the record indicates that the Board of Patent Appeals and Interferences rendered a decision on January 23, 2003 affirming the rejection of claims 1-3, 5, and 7 but reversing the examiner's rejection of claims 4 and 6.

MPEP §1214 outlines Office procedures following a decision by the Board of Patent Appeals and Interferences. MPEP §1214.06 "Examiner Sustained in Whole or in Part" states in part:

I. NO CLAIMS STAND ALLOWED

(B) If the Board or court affirms a rejection against an independent claim and reverses all rejections against a claim dependent thereon, the examiner, after expiration of the period for further appeal, should proceed in one of two ways:

(1) Convert the dependent claim into independent form by examiner's amendment, cancel all claims in which the rejection was affirmed, and issue the application; or

(2) Set a 1-month time limit in which appellant may rewrite the dependent

claim(s) in independent form. Extensions of time under 37 CFR 1.136(a) will not be permitted. If no timely reply is received, the examiner will cancel all rejected and objected to claims and issue the application with the allowed claims only.

A review of the record does not produce evidence of an examiner's amendment which places claims 4 and 6 into independent form and cancels claims 1-3, 5 and 7. In addition, no evidence in the file record suggests that the examiner issued a Quayle action which set a one month time period for Applicant to draft the amendment.

Therefore, it is determined that proper Office procedures were not followed and the mailing of the Notice of Abandonment was in error. Accordingly, the Notice of Abandonment is hereby vacated and the Holding of Abandonment withdrawn.

For the reasons set forth above, the petition is **GRANTED**.

The application will be forwarded to the examiner for appropriate action.

Allen MacDonald

Allen MacDonald, Director
Technology Center 2600
Communications
(703) 305-9700

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)
6,168,410	2001-01-02	08/908,783	1997-08-08	96,176

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	/Ary Pocay, President/ and /Reynaldo de Carvalho, Director/	Date (YYYY-MM-DD)	2009-03-20
Name	Ary Pocay, and Reynaldo De Carvalho		
Enter Reel and Frame Number		Remove	
Reel Number	008740	Frame Number	0278
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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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)).

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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.

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In re Patent No. 6168410
Issue Date: January 2,2001
Application No. 08908783
Filed: August 8,1997
Attorney Docket No. 96,176

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

This is a decision on the electronic petition, filed March 26,2009 ,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 March 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
Washington, D.C. 20231
www.uspto.gov

Paper No. 11

Richard J. Birch
8 River Glen Road
Wellesley, MA 02481

SEP - 5 2002

In re Application of)
Richard L. Eby et al.)
Application No. 08/908,872)
Filed: August 8, 1997)
For: ELECTRICAL CONNECTOR WITH)
PLANAR CONTACT ENGAGING)
SYSTEM)

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.181, filed June 11, 2002, to withdraw the holding of abandonment of the above-identified application.

The petition is DISMISSED.

This application was held abandoned for failure to respond in a timely manner to the final Office action mailed June 16, 1999. A Notice of Abandonment was mailed on February 15, 2000.

Petitioner states that a response was in fact timely filed. The response was the filing of a Continued Prosecution Application (CPA). To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt of a CPA, a petition for an extension of time of three (3) months and an extension of time fee of $ 870.00 on December 10, 1999. A copy of the response was submitted with the petition.

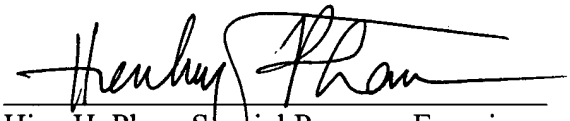
Pursuant to the Manual of Patent Examining Procedure (M.P.E.P.), section 711.03(c)(I), page 700-139 (Eighth Edition, August 2001), any petition not filed within 2 months of the mail date of a notice of abandonment may be dismissed as untimely. See 37 C.F.R. § 1.181(f). The Office may treat an untimely petition to withdraw the holding of abandonment on its merits on the condition that the petition is accompanied by a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted thereon that would extend beyond the twenty years from the filing date of the application, or the earliest application to which the application specifically refers under 35 U.S.C. 120, 121, or 365(c).

Because the petition was filed more than two years from the mail date of the notice of abandonment and was not accompanied by a terminal disclaimer, it is dismissed as untimely.

Any request for reconsideration of this decision must be submitted within TWO (2)MONTHS of the date of this decision.

The application file does not indicate a change of address has been filed in this case, although the address given on a paper filed differs from the address of record. Petitioner's attention is directed to Section 601.03 of the M.P.E.P. concerning change of correspondence address. The attorney or agent is responsible for promptly notifying the Office of any change of address. The notification should be provided in such a manner as to call attention to the fact that a change of address is being made. The mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being made, would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file records.

A courtesy copy of this decision is being mailed to the address listed on the petition. However, no further communication will be directed to this address until a proper change of address is made.



Hien H. Phan, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components
(703) 308-7502

cc: NIXON PEABODY LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14603-1051

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 16

Gunnar G. Leinberg
NIXON PEABODY LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051

MAY 18 2004

In re Application of)
Richard L. Eby et al.)
Application No. 08/908,872)
Filed: August 8, 1997)
For: ELECTRICAL CONNECTOR WITH) DECISION ON PETITION
PLANAR CONTACT ENGAGING)
SYSTEM)

This is a decision on the request for reconsideration of petition under 37 C.F.R. § 1.181, filed November 5, 2002, via facsimile transmission, to withdraw the holding of abandonment of the above-identified application.

The petition is GRANTED.

This application was held abandoned for failure to respond in a timely manner to the final Office action mailed June 16, 1999. A Notice of Abandonment was mailed on February 15, 2000.

Petitioner originally states that a response was in fact timely filed. The response was the filing of a Continued Prosecution Application (CPA). To support this assertion, petitioner has submitted a copy of a return postcard which acknowledges receipt of a CPA, a petition for an extension of time of three (3) months and an extension of time fee of $ 870.00 on December 10, 1999. A copy of the response was submitted with the petition.

The request for reconsideration is accompanied by a Terminal Disclaimer and a Revocation and Power of Attorney.

The holding of abandonment is hereby withdrawn and the Notice of Abandonment vacated.

The application filed is being forwarded to the technology center staff for processing the new power of attorney, the Terminal Disclaimer and the CPA. From there, the application will be returned to the examiner for further examination.

Hien H. Phan, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components
(703) 308-7502

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DAVID E. ROGERS
SQUIRE SANDERS AND DEMPSEY LLP
40 N CENTRAL AVE STE 2700
PHOENIX, AZ 85004

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SEP 18 2009

OFFICE OF PETITIONS

In re Patent No. 5,950,207 :
Issue Date: September 7, 1999 :
Application No. 08/908,901 : ON PETITION
Filed: August 8, 1997 :
Attorney Docket No: **022967.00006** :

This is a decision on the renewed petition filed September 1, 2009 under 37 CFR 1.378(c)[1], to accept the delayed payment of the maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued on September 7, 1999. The second maintenance fee due could have been paid during the period from September 7, 2006 to March 7, 2007 or, with a surcharge during the period from March 8, 2007 to September 7, 2007. Accordingly, this patent expired on September 7, 2007 for failure to timely remit the second maintenance fee.

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. Fees in the amount of $1240.00 for the second maintenance fee and $1,640.00 for the surcharge have been charged to deposit account no. 19-3878 as per the authorization contained in the petition.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1] 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.

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Paper No. 15

JOHN P. O'BANION
O'BANION & RITCHEY LLP
400 CAPITAL MALL, SUITE 1550
SACRAMENTO, CA 95814

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FEB 19 2004

OFFICE OF PETITIONS

In re Application of :
Horgan et al. :
Application No. 08/908,994 : ON PETITIONS
Filed: August 8, 1997 :
Attorney Docket No. 36212.00006 (SYN5397.01A) :

This decision concerns the January 12, 2004 renewed petitions under 37 CFR 1.47(a) and 37 CFR 1.137(b), supplemented on January 20, 2004; and the concurrently filed notification of name correction for an inventor.

The renewed petition under 37 CFR 1.47(a) is **DISMISSED as moot.**
The renewed petition under 37 CFR 1.137(b) is **GRANTED.**

Renewed petition under 37 CFR 1.47(a)

The renewed §1.47(a) petition is supplemented on January 20, 2004 with a "Combined Declaration and Power of Attorney" signed by the previously non-signing inventor, rendering the renewed §1.47(a) petition moot and subject to dismissal.

The first supplemental declaration, re-executed by 3 of the 4 inventors[1] and filed on January 12, 2004, and the second supplemental declaration, executed by the 4th inventor and filed on January 20, 2004, are hereby accepted. The application is now complete.

Renewed petition under 37 CFR 1.137(b)

Upon acceptance of the supplemental declarations, all the requirements of 37 CFR 1.137(b) have been met. The renewed §1.137(b) petition is thus granted.

Inventor name correction

A declaration by Michael J. Horgan, one of the named inventors, points out that the name for another inventor, previously listed as "Michael Gardner" in the October 6, 2003 Declaration, should have been "Michael Gardiner." The name will be corrected as indicated below.

---

[1] Re-executed because of the name correction for the non-signing inventor, who subsequently executed the 1/20/04 declaration.

The application file is being returned to the Office of Initial Patent Examination for **correction of the file wrapper label and the PALM database** to reflect the corrected inventor name (from "Michael Gardner" to "Michael **Gardiner**").[2] Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

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[2] MPEP 605.04(g) (Rev. 1, Feb. 2003).

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Paper No. 9

JOHN P. O'BANION
O'BANION & RITCHEY LLP
400 CAPITAL MALL, SUITE 1550
SACRAMENTO, CA 95814

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NOV 12 2003

OFFICE OF PETITIONS

In re Application of :
Horgan et al. :
Application No. 08/908,994 : ON PETITIONS
Filed: August 8, 1997 :
Attorney Docket No. 36212.00006 (SYN5397.01A) :

This decision concerns the October 6, 2003 petition under 37 CFR 1.47(a), and the concurrently filed petition under 37 CFR 1.137(b).

The petition under 37 CFR 1.47(a) is **DISMISSED.**
The petition under 37 CFR 1.137(b) is **DISMISSED.**

The application, upon filing, did not include an oath or declaration. On July 28, 1999, a "Notice to File Missing Parts of Application" was mailed, requesting that an oath or declaration in compliance with 37 CFR 1.63 be filed within an extendable 2-month period.

No response was filed on or before February 28, 2000, and no extension of time under 37 CFR 1.136(a) was obtained. The application became abandoned on September 29, 1999.

Petition under 37 CFR 1.47(a)

The petition, accompanied by a declaration signed by 3 of the 4 inventors named in the application, asserts that the non-signing inventor, Michael Gardner, could not be reached after diligent effort, and requests that the signing inventors be allowed to file the application on behalf of themselves and Michael Gardner.

Under 37 CFR 1.47(a), the available inventors may do so, provided that the petition shows, to the satisfaction of the Commissioner, that a diligent effort was made to locate/reach Michael Gardner, and that, despite such an effort, Michael Gardner could not be located or reached.

The instant petition indicates that on May 30, 2003, counsel for Assignee mailed a copy of the application to Michael Gardner at his last known address in Hong Kong; and that on June 24, 2003, the application papers were returned to counsel as undeliverable. Apparently, none of the available inventors knows of Michael Gardner's new address. The petition, while asserting that an Internet name search for Michael Gardner was unsuccessful, has not supplied any evidence of

the Internet search.[1]

In view of the above, the Office is unable to conclude that a reasonably diligent effort was made to locate/reach Michael Gardner. The §1.47(a) petition is thus dismissed.

The Office acknowledges receipt with the petition of the $130 petition fee and the $65 surcharge (small entity) for lacking a proper oath or declaration upon filing of the application.

Petition under 37 CFR 1.137(b)

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply to the Office action, unless previously filed;[2] (2) the petition fee; (3) a statement that the **entire** delay in filing the required reply from its due date until the filing of a grantable §1.137(b) petition was unintentional;[3] and (4) a terminal disclaimer for a utility application filed before June 8, 1995.[4]

The petition encloses the $665 petition fee (small entity). However, with the dismissal of the §1.47(a) petition, the declaration submitted with the petition is not accepted, and the §1.137(b) petition is dismissed for not meeting the threshold requirement of item (1) above.

A renewed §1.137(b) petition (no petition fee) must be filed within **TWO MONTHS** of the mailing date of this decision,[5] and be accompanied by either:

(1) an oath/declaration properly signed by all inventors, including Michael Gardner;[6]

or

(2) a renewed §1.47(a) petition (no petition fee) that includes sufficient showing, as discussed above, that a reasonably diligent effort was made, in vain, to locate or

---

[1] The last known address for Michael Gardner indicated in the petition appears to be an office address. Since Michael Gardner is a U.S. citizen, and if he can no longer be located in the Hong Kong work address, it may be prudent to conduct a name search in the U.S. database through, e.g., Lexis.com. The petition fails to point out in which database the name search was conducted.

[2] In the instant case, the "required reply" to the 7/28/99 Notice to File Missing Parts is an oath/declaration in compliance with 37 CFR 1.63, such as one accepted under a granted §1.47 petition.

[3] The application has been abandoned for more than 4 years. Such a statement is a pre-requisite to reviving the application. However, the statement is inappropriate even if only part of the entire delay in filing a proper oath/declaration was intentional, and may adversely affect enforcement of any patent resulting from the application. MPEP 711.03(c)(III)(C) (Rev. 1, Feb. 2003).

[4] Inapplicable to this application.

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

[6] **A supplemental declaration listing the invention and/or the application number, the entire inventorship; and is signed only by Michael Gardner, is sufficient.**

reach Michael Gardner.[7]

The renewed §1.137(b) petition under either of the options should be addressed as follows:

by mail/by hand: Commissioner for Patents, USPTO
Office of Petitions
Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

by fax:[8] (703) 308-6916
Attn: Office of Petitions

Finally, the application, upon filing on August 8, 1997, enclosed a basic filing fee in the amount of $385 (small entity) without a specific assertion of entitlement to small entity status. Under 37 CFR 1.27(c)(3), such a payment of the exact amount of the small entity basic filing fee should have been treated as a written assertion of entitlement to small entity status. However, the Office of Initial Patent Examination erroneously charged an additional $385, and a $130 surcharge,[9] to Deposit Account No. 05-0150, which is the account of the prior counsel's firm.[10] The overcharge ($385 and $130, totaling $515) has been credited to Deposit Account No. 05-0150.[11]

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

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[7] The steps taken to locate the whereabouts of Michael Gardner should be included in a statement of facts, signed by the person with firsthand knowledge of the facts recited therein. MPEP section 409.03(d) INVENTOR CANNOT BE REACHED (Rev. 1, Feb. 2003).

[8] This facsimile number may not be used after 12/1/03 for filing petitions.

[9] A surcharge was assessed for late filing of the entire basic filing fee, based on the mis-understanding that Assignee was not entitled to small entity status. The amounts of the fees submitted with the instant petition indicate that Assignee is entitled to small entity status.

[10] Graham & James LLP, 600 Hansen Way, Palo Alto, CA 94304 (Docket No. 36212.00006).

[11] **Counsel should coordinate with Graham & James re whether the 2 fees were already charged to Assignee. If so, Assignee should be re-imbursed by Graham & James.** If, on the other hand, Assignee is not entitled to small entity status, any fee deficiency associated with the instant petition must be submitted upon receipt of the decision.

cc: Fax (letter e-mail)

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BY: DFY

BRACEWELL & PATTERSON LLP
INTELLECTUAL PROPERTY LAW
P.O. BOX 969
AUSTIN TX 78767-0969

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NOV 10 2004

OFFICE OF PETITIONS

In re Application of :
Jerry Walter Malcolm :
Application No. 08/909,340 : DECISION GRANTING PETITION
Filed: August 11, 1997 : UNDER 37 CFR 1.137(b)
Attorney Docket No. AT9-97-314 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 18, 2004, to revive the above-identified application.

The petition is GRANTED.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement 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 petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and Declaration ; (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 31, 2003, is accepted as having been unintentionally delayed.

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

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

The application file is being forwarded to Technology Center Art Unit 3627.

Karen Ceasy

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

cc:
ANDREW J. DILLON
DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HIGHWAY
SUITE 2110
AUSTIN, TX 78759

SB

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NOV 10 2004

OFFICE OF PETITIONS

In re Application of :
Jerry Walter Malcolm :
Application No. 08/909,340 : DECISION GRANTING PETITION
Filed: August 11, 1997 : UNDER 37 CFR 1.137(b)
Attorney Docket No. AT9-97-314 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 18, 2004, to revive the above-identified application.

The petition is **GRANTED**.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement 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 petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and Declaration ; (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 31, 2003, is accepted as having been unintentionally delayed.

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

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

The application file is being forwarded to Technology Center Art Unit 3627.

Karen Ceasy

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

cc:
ANDREW J. DILLON
DILLON & YUDELL LLP
8911 N. CAPITAL OF TEXAS HIGHWAY
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Date Mailed: April 21, 2010

Patent No. :6091832
Inventor :Shurman et al.
Patent Issued : July 18, 2000
TITLE :WEARABLE PERSONAL AUDIO LOOP APPARATUS

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.

Review of the application file reveals that correspondence to support entry of reference data, item (56) of Title page as noted in applicants' request for correction is not found in the records of the Patent and Trademark office. Accordingly, a signed and dated copy of applicants 1449 or PTO-892 reflecting the requested references considered (signed) by the examiner is required for further consideration. If omitted references were submitted by applicant, a copy of the receipt obtained from this office should be included.

In view of the foregoing, applicants request is hereby denied. Any telephone inquiries concerning this communication should be directed to Ms. A. Green at (703) 756-1541.

Mary Diggs, Supervisor
Decisions and Certificates of
Correction Branch
(703) 756-1580 or (703) 756-1541

Christopher J. Daley-Watson
PERKINS COIE LLP
P.O. BOX 1247
Seattle, Washington 98111-1247

/arg

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 5890488
Issue Date: April 6,1999
Application No. 08909445
Filed: August 11,1997
Attorney Docket No. 0132/104CIP

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

This is a decision on the electronic petition, filed May 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 May 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.

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)
5890488	1999-04-06	08909445	1997-08-11	0132W/00004-C

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	/brant s. burden/	Date (YYYY-MM-DD)	2007-04-25
Name	Brant S. Burden		

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

MAILED

MAY 17 2007

TECHNOLOGY CENTER 2100

INGRASSIA FISHER & LORENZ, P.C.
7150 E. CAMELBACK, STE. 325
SCOTTSDALE AZ 85251

In re Application of: Allen, et al.
Patent No. 5,943,052
Issue Date: August 24, 1999
For: METHOD AND APPARATUS FOR SCROLL BAR CONTROL

DECISION ON PETITION

This is a decision on the petition, filed on December 12, 2007, from a refusal to issue a certificate of correction initially requested on October 10, 2002 and again on July 14, 2003.

The petition is **GRANTED**.

M.P.E.P. § 1.323, and 35 U.S.C. § 255 are reproduced below:

§ 1.323 Certificate of correction of applicant's mistake.

The Office may issue a certificate of correction under the conditions specified in 35 U.S.C. 255 at the request of the patentee or the patentee's assignee, upon payment of the fee set forth in § 1.20(a). If the request relates to a patent involved in an interference, the request must comply with the requirements of this section and be accompanied by a motion under § 41.121(a)(2) or § 41.121(a)(3) of this title.

[34 FR 5550, Mar. 22, 1969; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; revised, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

35 U.S.C. 255 Certificate of correction of applicant's mistake.

Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the Patent and Trademark Office, appears in a patent and a showing has been made that such mistake occurred in good faith, the Director may, upon payment of the required fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination. Such patent, together with the certificate, shall have the same effect and operation in law on the trial of actions for causes thereafter arising as if the same had been originally issued in such corrected form.

(Amended Jan. 2, 1975, Public Law 93-596, sec. 1, 88 Stat. 1949; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-582 (S. 1948 sec. 4732(a)(10)(A)).)

Applicant's comments on pages 1-7 of the petition clearly set forth the position of the federal circuit concerning the type of mistake and the nature of any proposed corrections that are permitted under § 255. In the instant case changing "stimuli" to –object motion- in claims 5-11 and 15-20 places the dependent claims in agreement with the previously amended independent claims 1 and 14. Furthermore no "new matter" as referred to in § 255 has been added. Support for the above mentioned change can be found on page 4 of the specification (see line 32, "pointing mechanism").

Applicant's petition filed on December 12, 2007 meets all the criteria set out in 35 U.S.C. § 255 . Accordingly, the petition is **GRANTED**.

Wendy Garber, Director
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571)272-1400

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

MAILED
JUN 13 2000
Office of Director
Technology Center 1600

RJH
Paper No. 45

In re Application of:
PRIEELS ET AL.
Serial No.: 08/909,879
Filed: August 12, 1997
For: Vaccine Composition Containing Adjuvant

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.102 and MPEP 708.02, filed June 28, 1999, to render the application special for examination purposes because the invention relates to the prevention and treatment of HIV/AIDS (MPEP 708.02 (X)).

The petition has been reviewed and it is found to be in compliance with the requirements for special status as set forth in 37 CFR 1.102(d) and in Section 708.02(X) of the Manual of Patent Examining Procedure.

Subject alone to diligent prosecution by the applicants, this application will continue to be treated special throughout the entire prosecution in the Patent and Trademark Office.

The petition is GRANTED.

John Doll, Director
Technology Center 1600

FINNEGAN HENDERSON FARABOW
GARRETT AND DUNNER
1300 I STREET NW
WASHINGTON, DC 20005-3315

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. 5860230
Issue Date: January 19,1999
Application No. 08910022
Filed: August 12,1997
Attorney Docket No. GDC-003

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

This is a decision on the electronic petition, filed June 26,2007 ,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 26,2007 . 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)
5,860,230	1999-01-19	08/910,022	1997-08-12	18721US01

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 J. McAndrews/	Date (YYYY-MM-DD)	2007-06-26
Name	Peter J. McAndrews	Registration Number	38547

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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080925

DATE : September 25, 2008

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction on Patent No.: 5,876,997

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:

/Nashaat T Nashed/
Supervisory Patent Examiner.Art Unit 1652

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.
08/910,798	08/13/1997	Jay M. Short	564462001800/029001	2975

45975 7590 09/25/2008

VERENIUM C/O MOFO S.D.
12531 HIGH BLUFF DRIVE
SUITE 100
SAN DIEGO, CA 92130-2040

EXAMINER	
TUNG, PETER P	

ART UNIT	PAPER NUMBER
1652	

MAIL DATE	DELIVERY MODE
09/25/2008	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Lynn Linkowski
Verenium Corporation
Intellectual Property Department

In re Patent No. 5,876,997 Keith A. Kretz
Issue Date: March 2, 1999
Appl No.: 08/910,798
Filed: August 13, 1997
For: Correction of Inventorship

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed August 6, 2008, to correct inventorship under 37 CFR 1.324. The petition has complied with all the requirements 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.

/Nashaat T. Nashed/

Nashaat T. Nashed, Ph. D.
Supervisory Patent Examiner
Art Unit 1652
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

DATE: Septembre 24, 2008
TO: Certificates of Correction Branch
FROM: Nashaat T. Nashed
Supervisory Patent Examiner
Art Unit 1652, Technology Center 1600
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. US 5,876,997 as specified on the attached Certificate.

/Nashaat T. Nashed/

Nashaat T. Nashed, Ph. D.
Supervisory Patent Examiner
Art Unit 1652
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. US 5,876,997
Patented: March 2, 1999

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:

Jay M. Short.

/Nashaat T. Nashed/

Nashaat T. Nashed, Ph. D.
Supervisory Patent Examiner
Art Unit 1652
Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 9/12/2007

TO SPE OF : ART UNIT 3600 (3679)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,039,497

Attn: Daniel Stodola

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

Please complete this form and forward within 7 days to: **Scanning customer Support**

Send copy also via PTO mail to:
Certificates of Correction Branch – 2900 South Tower 9A39A
Palm location **7580** - Tel. No. 308-8309

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.

Ok to make changes as requested in Petition dated 5/9/2003? (Reconsideration)

Ernest C. White, LIE - 308-9390x122
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.

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

Comments: Petition filed 5/9/03 is treated as a request for reconsideration. The requested changes included therein (see attached copy) are correct and the way the claims should've appeared in the patent. The previous denials were incorrect because p.3 of amdt of 9/7/1999 clearly provided dependency of claims as being requested in the certificate of correction request.

Daniel P Stodola 9/12/07
SPE 3679

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,039,497
DATED : March 21, 2000
INVENTOR(S) : Lars Gullberg

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

Column 4, line 32 (claim 5, line 1), "4" should be deleted and replaced with --1--.

Column 4, line 40 (claim 7, line 1), "4" should be deleted and replaced with --1--.

MAILING ADDRESS OF SENDER:

SMITH-HILL AND BEDELL, P.C.
12670 N.W. Barnes Road, #104
Portland, Oregon 97229

PATENT NO. 6,039,497
ATTORNEY DOCKET AWEK 1568

FORM PTO-1050

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)
5925003	1999-07-20	08911336	1997-08-14	738.3

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	/FRANK LIEBENOW/	Date (YYYY-MM-DD)	2008-05-15
Name	Frank Liebenow	Registration Number	48688

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. 5925003
Issue Date: July 20,1999
Application No. 08911336
Filed: August 14,1997
Attorney Docket No. 738.3

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

This is a decision on the electronic petition, filed May 15,2008 ,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 15,2008 . 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)
5,889,469	1999-03-30	08911385	1997-08-14	400077-21

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

	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 R. Hilberg/	Date (YYYY-MM-DD)	2009-02-27
Name	Christopher R. Hilberg	Registration Number	48740

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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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. 5889469
Issue Date: March 30,1999
Application No. 08911385
Filed: August 14,1997
Attorney Docket No. 123-083/4000

:
: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 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 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.

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. 6240968
Issue Date: June 5,2001
Application No. 08911469
Filed: August 14,1997
Attorney Docket No. 26503.0500

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

This is a decision on the electronic petition, filed November 3,2009 ,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 November 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.

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)
6,240,968	2001-06-05	08/911,469	1997-08-14	26503.0500

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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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 O. Caplan/	Date (YYYY-MM-DD)	2009-11-03
Name	David O. Caplan	Registration Number	41655

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.

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 S[illegible] TMENT OF COMMERCE
Patent and [illegible]ce
ASSISTAN[illegible] AND COMMISSIONER OF
PATENTS AN[illegible]MARKS
Washington, D.C. 20231

Paper No. 14

Steven F. Weinstock
Abbott Laboratories
D 377 AP6D/2
100 Abbott Park Road
Abbott Park, IL 60064-6050

COPY MAILED

JUN 2 2 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
John R. Hackett, Jr. et al.
Application No. 08/911,824
Filed: August 15, 1997
Attorney Docket No. 6165.US.01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 4, 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 July 16, 1998, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 17, 1998.

It is noted that the address given on the petition, differs slightly with the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

The application file is being forwarded to Technology Center 1600.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

NOTICE RE: CERTIFICATES OF CORRECTION Paper No. ____

DATE : 6-16-00

TO : Supervisor, Art Unit 1616

SUBJECT : Certificate of Correction Request in Patent No. 5,990,076

EXPEDITE

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

EXPEDITE EXPEDITE

☒ 1. Would the change(s) requested under 37 CFR 1.323 constitute new matter or require reexamination of the application?

☒ 2. Would the change(s) requested under 37 CFR 1.323 materially affect the scope or meaning of the claims allowed by the examiner in the patent?

EXPEDITE

☐ 3. Applicant disagrees with change(s) initially added 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 errors, should the patent read as shown in the certificate of correction?

WHERE?

☐ 5. If the amendment filed _____ had been considered by the Examiner, would the amendment have been entered?

EXPEDITE

PLEASE RESPOND WITHIN 7 DAYS AND RETURN THE FILE TO ROOM 809, PKI

EXPEDITE

Patent Assistant

DO NOT SEND TO WAREHOU

TO: CERTIFICATES OF CORRECTION BRANCH | 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 Please enter changes to columns 12 & 13 as requested. Do not change title.

_____ *Supervisor*

1616 *Art Unit*

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

FEB 12 2003

#33

PAUL F. FEHLNER
DARBY & DARBY, P.C.
805 THIRD AVENUE
NEW YORK NY 10022

In re Application of	:	
Daniel Meruelo et al	:	
Serial No.: 08/912,332	:	WITHDRAWAL OF ABANDONMENT
Filed: August 18, 1997	:	
Attorney Docket No.: 5986/11121	:	

This is in response to applicant's petition under 37 CFR 1.181, filed November 1, 2001, requesting withdrawal of the holding of abandonment of the above identified application.

A review of the file history shows that the examiner mailed a Final Office action to applicants on January 4, 2002, setting a three month statutory period for reply. Upon failure to receive an acceptable reply the application was held abandoned by Notice of Abandonment mailed to applicants on October 21, 2002. Applicants present evidence of timely submission of a Notice of Appeal on July 1, 2002. The Notice of Appeal and extension of time request and fee have now been located and placed in the file. In view of the timely submission the Notice of Abandonment was mailed in error and is withdrawn and the application restored to pending status with the mailing of this decision.

Applicants' petition is **GRANTED.**

The TWO MONTH time period for filing the Appeal Brief required under 37 CFR 1.192(a) runs from the date of mailing of this decision or as may be extended under 37 CFR 1.136(a).

The application will be forwarded to the examiner for consideration of the amendments filed concurrently with the petition.

Should there be any questions with regard to this letter please contact William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 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)
6,048,374	2000-04-11	08/912,485	1997-08-18	

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)
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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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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

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	/Alex E.S. Green/	Date (YYYY-MM-DD)	2008-06-15
Name	Alex E.S. Green		

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.

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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. 6048374
Issue Date: April 11,2000
Application No. 08912485
Filed: August 18,1997
Attorney Docket No. GRE-100

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

This is a decision on the electronic petition, filed June 15,2008 ,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 15,2008 . 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
www.uspto.gov

Paper No. 17

Eitan, Pearl, Latzer & Cohen-Zedek
One Crystal Park, Suite 210
2011 Crystal Drive
Arlington, VA 22202-3709

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JUL 0 2 2001

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of :
Shimon Eckhouse, et al. :
Application No. 08/912,764 : ON PETITION
Filed: August 18, 1997 :
Attorney Docket No. P-1744-US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 31, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit formal drawings in a timely manner in reply to the Notice of Allowability mailed July 27, 1999, 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 October 28, 1999.

In view of the authorization contained in the petition to chage the necessary fee due, the $1,240.00 petition fee will be charged to Deposit Account No. 05-0649.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Marianne Morgan at (703)306-3475.

The application file is being forwarded to Publishing Division to be processed into a patent.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne Morgan
Petitions Examiner

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. 5837615
Issue Date: November 17,1998
Application No. 08912944
Filed: August 14,1997
Attorney Docket No. P-2586/1C

:
: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.

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)
5,837,615	1998-11-17	08/912,944	1997-08-14	P-2586/1C

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. 5989265
Issue Date: November 23,1999
Application No. 08913081
Filed: December 22,1997
Attorney Docket No. 032013-003

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

This is a decision on the electronic petition, filed February 7,2008 ,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 February 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)
5989265	1999-11-23	08913081	1997-12-22	

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	/Jean Bouquet/	Date (YYYY-MM-DD)	2008-02-07
Name	/Jean-henri Bouquet de la Joliniere/		

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.

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Paper No. 39

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
4 EMBARCADERO CENTER
SUITE 3400
SAN FRANCISCO, CA 94111

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JUL 1 2 2004

OFFICE OF PETITIONS

In re Application	:	
Zentgraf et al.	:	
Application No. 08/913,139	:	DECISION ON PETITION
Filed: February 9, 1998	:	
Atty Docket No. 8484-029-999	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR § 1.137(b)," filed January 16, 2004.

The petition under § 1.137(b) is **DISMISSED AS MOOT**. No consideration under § 1.137(b) is necessary and none has been undertaken.

For the reasons set forth herein, the instant application is not abandoned. Further, this application was not considered abandoned on October 14, 2003, when continuation application No. 10/686,355 was filed.

The following prosecution history is relevant to this decision:

- On October 21, 2002, the Office mailed a final Office action in the above-identified application.
- On March 14, 2003, applicants replied with an amendment and a Notice of Appeal (and fee). This reply was made timely by an accompanying petition (and fee) for an extension of time for response within the second month.
- By Advisory Action mailed April 14, 2003, applicants were advised that the amendment filed March 14, 2003 did not place the application in condition for allowance.
- The period provided in 37 CFR 1.192(a) for filing an appeal brief (and fee) expired without the filing of an appeal brief or fee.
- On October 14, 2003, applicants filed continuation application No. 10/686,355.

- On January 9, 2004, the Office issued a Notice of Allowance and Fee(s) Due in the instant application.
- On January 16, 2004, applicants filed the instant petition under § 1.137(b)(and fee at small entity rate), along with a petition for extension of time under § 1.136(a)(and fee).
- On April 6, 2004, applicants transmitted the Issue Fee (at the large entity rate).

In essence, applicants filed the instant petition to clarify the status of this application and to determine the basis in the rules for co-pendency to have been maintained between the instant application and continuation application No. 10/686,355 filed October 14, 2003. No notice of abandonment was ever mailed in this application. However, applicants did fail to file an appeal brief within the period provided in 37 CFR 1.192(a).

Petitioner's attention is directed to 37 CFR § 1.192(b) which provides that:

> On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

MPEP 1215.04 further clarifies the status of an application upon failure to file an appeal brief, as follows:

> If no brief is filed within the time prescribed by 37 CFR 1.192, the appeal stands dismissed by operation of the rule. ... If no claims stand allowed, an application is considered as abandoned on the date the brief was due. If claims stand allowed in an application, the failure to file a brief and consequent dismissal of the appeal is to be treated as a withdrawal of the appeal and of any claim not standing allowed. The application should be passed to issue forthwith. Unless appellant specifically withdraws the appeal as to rejected claims, the appeal should not be dismissed until the extended period (5 months under 37 CFR 1.136(a)) to file the brief has expired.
>
> Applications having no allowed claims will be abandoned. Claims which are allowable except for their dependency from rejected claims will be treated as if they were rejected.

In the instant case, claim 4 is allowed. Claim 4 does not depend from rejected claims 1-3. See Final Office action mailed October 21, 2002; Advisory Action mailed April 14, 2003. Accordingly, upon dismissal of the appeal, the examiner properly issued the application with claim 4 only.

Since consideration of the petition under § 1.137(b) was unnecessary, the petition fee of $665 is being refunded to Deposit Account No. 50-2319, as authorized. Likewise, there is no need for the extension of time for response under § 1.136(a) filed January 16, 2004. The extension fee of $1002 is also being refunded to Deposit Account No. 50-2319.

Pursuant to the Notice of Allowance mailed January 9, 2004, the application file is being forwarded to the Publishing Division for processing into a patent.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309.

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

MAY 13 2008

Kenyon & Kenyon
One Broadway
New York, NY 10004

In Re: Patent Term Extension
Application for
U.S. Patent No. 6,034,267

FINAL DECISION REGARDING PATENT TERM EXTENSION APPLICATION UNDER 35 U.S.C. § 156 FOR U.S. PATENT NO. 6,034,267

This is in response to the application for extension of the term of U.S. Patent No. 6,034,267 ("the '267 patent") filed under 35 U.S.C. § 156 in the United States Patent and Trademark Office ("USPTO") on September 22, 2004 ("the PTE Application"), and the Request for Reconsideration of Final Determination of Ineligibility for Patent Term Extension filed on November 13, 2007 ("the Request for Reconsideration"). The PTE Application was filed by PhotoCure ASA ("Applicant"), assignee and owner of the '267 patent. Extension was sought based upon the premarket review of METVIXIA™ (methyl aminolevulinate hydrochloride) under section 505(b) of the Federal Food Drug and Cosmetic Act ("FFDCA"). Because the Food and Drug Administration ("FDA") and the USPTO have determined that the approval of METVIXIA™ (methyl aminolevulinate hydrochloride) does not constitute the first permitted commercial marketing or use of the "product," the PTE Application is **DENIED** and the Request for Reconsideration is **DENIED**.

A. Factual Background

On July 27, 2004, the FDA approved NDA No. 21-415 for METVIXIA™ (methyl aminolevulinate hydrochloride).

On September 22, 2004, Applicant timely filed the PTE Application in the USPTO.

On November 7, 2006, the USPTO sent a letter to FDA, requesting the FDA's assistance in confirming that (1) the product identified in the PTE Application, METVIXIA™ (methyl aminolevulinate hydrochloride), was subject to a regulatory review period within the meaning of 35 U.S.C. § 156(g) before its first permitted commercial marketing or use and (2) the PTE application was filed 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, as required by 35 U.S.C. § 156(d)(1). The November 7, 2006, letter notes at page 2 that "[a]minolevulinic acid hydrochloride had been previously approved by the FDA" and that "methyl aminolevulinate hydrochloride is an ester of aminolevulinic acid hydrochloride."

On March 5, 2007, FDA responded to the USPTO stating (1) FDA's approval of

METVIXIA™ (methyl aminolevulinate hydrochloride) does not represent the first permitted commercial marketing or use of the "product," as defined under 35 U.S.C. § 156(f)(1), and as interpreted by the courts, and (2) the PTE Application was timely filed.

On April 11, 2007, the USPTO mailed a Notice of Final Determination – Ineligible ("Notice") in which the USPTO states that the '267 patent is ineligible for patent term extension under 35 U.S.C. § 156. In particular, the Notice states:

> By the explicit terms of section 156(f)(2), the term "product" as it relates to a human drug product means the active ingredient of the new drug product. The active ingredient in the approved product METVIXIA™ is methyl aminolevulinate hydrochloride, which, as an ester of the previously-approved aminolevulinic acid hydrochloride, is by statute the same product as aminolevulinic acid hydrochloride. ... Furthermore, the prior approval of the active ingredient aminolevulinic acid hydrochloride in LEVULAN® by the Food and Drug Administration was under section 505 of the FFDCA, the same provision of law under which regulatory review of the product METVIXIA™ occurred.

On November 13, 2007, Applicant filed the Request for Reconsideration. The Request for Reconsideration states at page 3 that "the proper inquiry is simply, based on the plain language of the statute, whether or not the active ingredient in Levulan®, namely, aminolevulinic acid hydrochloride, is an ester (or the same as or a salt) of the active ingredient of Metvixia™." The Request for Reconsideration further states the following, at the paragraph bridging pages 3 and 4:

> the active ingredient of Metvixia™ is the hydrochloride salt of the ester methyl aminolevulinate, whereas the active ingredient of Levulan® is the hydrochloride salt of the acid aminolevulinic acid. Aminolevulinic acid hydrochloride is not the same as, or a salt or ester of, methyl aminolevulinate hydrochloride. The product methyl aminolevulinate hydrochloride therefore has not been previously approved because aminolevulinic acid hydrochloride does not "[fall] within the definition" of "product" as that term is properly construed. *See* [*Glaxo Operations UK, Ltd v. Quigg*, 894 F.2d 392, 394 (Fed. Cir. 1990)]. It therefore follows that Metvixia™ is not precluded from patent term extension eligibility by the previous approval of aminolevulinic acid hydrochloride.

(Emphasis in the original). The Request for Reconsideration also states at page 5 that "there are substantial differences between methyl aminolevulinate hydrochloride and [5-aminolevulinic acid ("ALA")] hydrochloride, as evidenced by the attached Declaration of Dr. Kristian Berg in Support of Grant of Patent Term Extension with Respect to U.S. Patent No. 6,034,267 and accompanying exhibits."

B. Decision

1. The Plain Language of 35 U.S.C. § 156(f) Shows That METVIXIA™ (methyl aminolevulinate hydrochloride) Is Not the First Permitted Commercial Marketing or Use of the "Product" As Required by 35 U.S.C. § 156(a)(5)(A)

Section 156(a) of Title 35 sets forth several requirements that must be met before the Director can extend the term of a patent. *See* 35 U.S.C. §§ 156 (a)(1)-(a)(5), (d)(1), & (e)(1). Section 156(a)(5)(A) requires that:

> the permission for the commercial marketing or use of the product ... [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). The term "product" as used in section 156(a)(5)(A) is defined in section 156(f)(1) as a "drug product," and the term "drug product" is defined in section 156(f)(2) as the "active ingredient of [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) (emphasis added). Hence, by the explicit terms of section 156(f)(2), the term "product" as used in section 156 includes: (i) a non-salified and non-esterified form of a molecule (*i.e.*, the "active ingredient"); (ii) any salt of the molecule (*i.e.*, the "salt ... of the active ingredient"); and (iii) any ester of the molecule (*i.e.*, the " ... ester of the active ingredient").[1] Because a "product" includes all three forms, any salt of a molecule is statutorily the same "product" as any ester of the molecule for purposes of the patent term extension provisions in section 156. Further, the plain meaning of the phrase "any ester" encompasses any ester, including salified and non-salified esters.

Prior to the approval of METVIXIA™ (methyl aminolevulinate hydrochloride), the FDA approved LEVULAN® (aminolevulinic acid hydrochloride). There is no dispute that ALA is present in both METVIXIA™ and LEVULAN® as the underlying molecule. For example, at page 2 of the Declaration attached to the Request for Reconsideration, Dr. Berg states that METVIXIA™ "has as its active ingredient the hydrochloride salt of the methyl ester of ALA," and that LEVULAN® "has the hydrochloride salt of ALA as its active ingredient." Consequently, the approved "product" is the same for both METVIXIA™ and LEVULAN® under section 156, *i.e.*, ALA merely formulated differently in each product. The later approved METVIXIA™ (methyl aminolevulinate hydrochloride) thus does not represent the first permitted commercial marketing or use of the "product" under the provision of law under which such regulatory review occurred. The USPTO therefore concludes that the PTE Application does not

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[1]The plain language of section 156(f) makes clear that the same definition of "product" is to be applied throughout section 156. Section 156(f) explicitly states that its provisions are "for purposes of this section." Thus, the term "product" as used throughout 35 U.S.C. § 156—for eligibility under section 156(a) and for enforcement under section 156(b)—has but one meaning.

satisfy the requirement of section 156(a)(5)(A) and the '267 patent is ineligible for a patent term extension. Accordingly, the PTE Application must be **DENIED**.

2. Judicial Precedent Confirms That METVIXIA™ (methyl aminolevulinate hydrochloride) Is Not the First Permitted Commercial Marketing or Use of the "Product" As Required by 35 U.S.C. § 156(a)(5)(A)

Judicial precedent confirms that the USPTO's application of the definition of "product," as that term is used in section 156(a)(5)(A), is correct. In *Fisons v. Quigg*, 1988 WL 150851 (D.D.C. 1988) ("*Fisons I*"), the district court addressed the meaning of the term "product." The district court considered both the plain language of section 156(a)(5)(A) and its legislative history. With respect to the latter, the district court observed:

> Upon examination, the specific purpose of Section 156(a)(5)(A) appears to have been relatively narrow—to restore lost patent life only for "pioneer" drugs. A report by the Congressional Office of Technology Assessment ("OTA") to the 97th Congress provided the factual foundation for the restriction of patent restoration benefits to new chemical entities. The OTA report stated: "Although important pharmaceutical innovations may result from new therapeutic applications of existing chemicals ... many of the pharmaceutical breakthroughs that have occurred have resulted from NCE (new chemical entity) research and the development of NCEs generally has required more time and money than other types of innovation and has involved greater risks." The House Committee on Energy and Commerce explained that the bill "requires extensions to be based on the first approval of the product because the only evidence available to Congress showing that patent time has been lost is data on so-called class I, new chemical entity drugs."

Fisons I, 1988 WL 150851 at *7. After making these observations, the district court found that "Congress's intent was to restore patent life only to new chemical entities." The district court thus construed section 156(a)(5)(A) in a straightforward way:

> In the definitional provision of Section 156, the term "product" is defined as a "human drug product." 35 U.S.C. § 156(f)(1)(A). This term is further defined in the next subparagraph as "the *active ingredient* of 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)(2) (emphasis added in original). Substituting this definition directly back into Section 156(a)(5)(A) yields the statement that a patent is ineligible for extension if it is not the first permitted commercial marketing or use of the active ingredient contained in that approved patented product.

Id. at *5.

The Federal Circuit affirmed the district court's interpretation. *See Fisons v. Quigg*, 876 F.2d 99 (Fed. Cir. 1989) ("*Fisons II*"). The Federal Circuit stated: "In sum, we hold that the district court correctly applied the definition given in 35 U.S.C. § 156(f) to the term 'product' used in section 156(a)(5)(A). We are convinced that such an interpretation comports with the intent of Congress as expressed in the statute." *Fisons II*, 876 F.2d at 102.

The Federal Circuit later interpreted the term "active ingredient" in *Pfizer, Inc. v. Dr. Reddy's Labs.*, Ltd., 359 F.3d 1361 (Fed. Cir. 2004). There, the Federal Circuit accepted the FDA's definition of the term "active ingredient" as meaning "active moiety." *See 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)). It likewise accepted 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," based upon the FDA's regulations. *Id.* (quoting 21 C.F.R. § 314.108(a)) (omission in original). Hence, the Federal Circuit has construed the term "active ingredient" as used in section 156(f)(2) to mean the underlying molecule, *i.e.*, the molecule or ion responsible for the physiological or pharmacological action of the drug, excluding those appended portions of the molecule that cause the drug to be an ester or salt.

Substituting this definition for the word "active ingredient" as it appears in section 156, the term "drug product" in section 156(f)(2) must mean the underlying molecule as well as any salt or ester of the underlying molecule, since it is defined as "active ingredient ... including any salt or ester of the active ingredient." Further, because "product" is defined as "drug product" in section 156(f)(1)(A), "product" likewise must mean the underlying molecule as well as any salt or ester of the underlying molecule. That definition conforms with the plain language of section 156(f). What is more, the Federal Circuit confirmed in *Pfizer* that only the first approval for any given "active ingredient" can trigger a patent term extension under 35 U.S.C. § 156, regardless of whether that first approval was for an underlying molecule, a salt of the underlying molecule, or an ester of the underlying molecule. *See Pfizer*, 359 F.3d at 1366 ("The statute [referring to 35 U.S.C. § 156] foresaw variation in the salt or ester of an active ingredient, and guarded against the very loophole now urged.").

Here, before approving METVIXIA™ (methyl aminolevulinate hydrochloride) in 2004, the FDA approved LEVULAN® (aminolevulinic acid hydrochloride) in 1999. As explained above, ALA is the underlying molecule in both METVIXIA™ and LEVULAN®. ALA is simply formulated differently in the two different drugs: as a hydrochloride salt of its methyl ester in METVIXIA™, and as a hydrochloride salt in LEVULAN®. However, the difference in formulation does not matter for purposes of defining a product in section 156. The statutory definition of "product" includes the underlying molecule as well as any salt or ester of the underlying molecule. Accordingly, METVIXIA™ (methyl aminolevulinate hydrochloride) is not the first permitted commercial marketing or use of the "product" as required by 35 U.S.C. § 156(a)(5)(A) because of the earlier approval of LEVULAN® (aminolevulinic acid hydrochloride).

Finally, the FDA has issued a regulation defining the term "active ingredient" of a pharmaceutical "product" for purposes of patent term extension under 35 U.S.C. § 156. Specifically, 21 C.F.R. § 60.1(a) states that "[t]his part [referring to Part 60] sets forth procedures and requirements for the [FDA]'s review of applications for the extension of the term of certain patents under 35 U.S.C. § 156." That provision further states that "[FDA] actions in this area include [*inter alia*] [a]ssisting the [USPTO] in determining eligibility for patent term restoration." 21 C.F.R. § 60.1(a)(1). Section 60.3 then provides a series of definitions to be used in Part 60 in addition to the definitions already contained in 35 U.S.C. § 156. 37 C.F.R. § 60(b)(2) defines "active ingredient" for purposes of a patent extension to mean a drug's active moiety, *i.e.*, its therapeutically active component. It states:

> Active ingredient means any component that is intended to furnish pharmacological activity or other direct effects in the diagnosis, cure, mitigation, treatment or prevention of disease, or to affect the structure or function of the body of man or of animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.

21 C.F.R. § 60.3 (b)(2). Applying the FDA's regulations in this case, ALA is the "active ingredient" of not just LEVULAN® (aminolevulinic acid hydrochloride), but also of METVIXIA™ (methyl aminolevulinate hydrochloride); it is simply formulated as a hydrochloride salt of its methyl ester in METVIXIA™, and as a hydrochloride salt in LEVULAN®.

The USPTO recognizes that *Glaxo* also concerns section 156(f). However, the USPTO observes that *Glaxo* is factually distinguishable because the Federal Circuit did not address the definition of "active ingredient" in that case. Rather, the Federal Circuit focused on the USPTO's argument that the term "product" did not have the literal meaning set forth in section 156(f)(2), but instead meant "any 'new chemical entity,' *i.e.*, 'new active moiety.'" Rejecting that argument, the Federal Circuit explained that Congress provided a definition of the term "product" in section 156(f)(2) and that Congress "selected terms with narrow meanings that it chose from among many alternatives." *Glaxo*, 894 F.2d at 399 (footnoting as examples of other possible words "new molecular entity," "active moiety," and "new chemical entity"). The Federal Circuit did not discuss the definition of the term "active ingredient" because, unlike here, the determination of the active ingredient was not in dispute in *Glaxo*.

The most that can be said about *Glaxo* is that the Federal Circuit acknowledged that the term "product" was not expressly defined by Congress to mean "active moiety," since those words do not appear in section 156(f)(2). However, *Glaxo* does not hold that the term "active ingredient" as used in section 156(f)(2) does not mean "active moiety." In fact, the Federal Circuit later accorded the term "active ingredient" with that precise definition in *Pfizer*. *See Pfizer*, 359 F.3d at 1366. Accordingly, the USPTO's determination that the '267 patent is

ineligible for extension pursuant to section 156 is supported by, and consistent with, *Glaxo*. As such, the PTE Application must be **DENIED**.

3. Applicant's Argument That METVIXIA™ Is Eligible for Patent Term Extension Because Neither Methyl Aminolevulinate Hydrochloride nor Any Salt or Ester of Methyl Aminolevulinate Hydrochloride Has Been Previously Approved for Commercial Marketing or Use Is Unpersuasive

Applicant states at page 3 of the Request for Reconsideration that "the proper inquiry is simply, based on the plain language of the statute, whether or not the active ingredient in Levulan®, namely, aminolevulinic acid hydrochloride, is an ester (or the same as or a salt) of the active ingredient of Metvixia™." At the paragraph bridging pages 3 and 4 of the Request for Reconsideration, Applicant concludes that the '267 patent is eligible for extension, because "[a]minolevulinic acid hydrochloride is not the same as, or a salt or ester of, methyl aminolevulinate hydrochloride."

In making the above statements in the Request for Reconsideration, Applicant ignores both (i) the full scope of the relationship between aminolevulinic acid hydrochloride and methyl aminolevulinate hydrochloride, and (ii) the Federal Circuit's decision in *Pfizer* that the term "active ingredient," when properly construed, means the underlying molecule, *i.e.*, the molecule or ion responsible for the physiological or pharmacological action of the drug, excluding those appended portions of the molecule that cause the drug to be an ester or salt. Applying the Federal Circuit's construction of the term "active ingredient" in *Pfizer* to the present case, ALA is the "active ingredient" of both METVIXIA™ and LEVULAN®. Consequently, the active ingredient in METVIXIA™ - ALA formulated as a hydrochloride salt of its methyl ester - has already been approved by the FDA with the approval of LEVULAN® (ALA formulated as a hydrochloride salt). Applicant's statement that neither methyl aminolevulinate hydrochloride nor an ester or salt of methyl aminolevulinate hydrochloride had previously been approved, while correct, is irrelevant to the calculus here. The USPTO must therefore conclude that the PTE Application does not satisfy the requirement of section 156(a)(5)(A) and the '267 patent is ineligible for a patent term extension. Accordingly, the PTE Application must be **DENIED**.

4. Applicant's Argument That There Are Substantial Differences Between Methyl Aminolevulinate Hydrochloride and Aminolevulinic Acid Hydrochloride Is Unpersuasive

Applicant states the following at page 5 of the Request for Reconsideration:

> there are substantial differences between methyl aminolevulinate hydrochloride and ALA hydrochloride, as evidenced by the attached Declaration of Dr. Kristian Berg in Support of Grant of Patent Term Extension with Respect to U.S. Patent

No. 6,034,267 and accompanying exhibits. These include substantial differences in selectivity of uptake by target lesions, penetration of target lesions, (unwanted) systemic distribution, pain resulting from use in PDT, and mechanisms of cell uptake. Accordingly, methyl aminolevulinate hydrochloride should not be considered the same "product" as aminolevulinic acid hydrochloride (regardless of how "product" is construed).

The existence of "substantial differences" between methyl aminolevulinate hydrochloride and aminolevulinic acid hydrochloride, even if verified, has no bearing on whether the PTE Application satisfies the requirement of section 156(a)(5)(A). For the reasons stated in the analysis above, the approved "product" is the same for both METVIXIA™ and LEVULAN® under section 156, *i.e.*, ALA merely formulated differently in each product. Nothing in the statutory language of 35 U.S.C. § 156 or in judicial precedent considering section 156 creates a "substantial differences" exception in the inquiry of whether the requirement of section 156(a)(5)(A) has been satisfied. For the reasons stated earlier herein, the USPTO concludes that the PTE Application does not satisfy the requirement of section 156(a)(5)(A) and the '267 patent is ineligible for a patent term extension. Therefore, the PTE Application must be **DENIED**.

5. Conclusion

For the reasons stated above, Applicant's request for extension of the patent term of the '267 patent is **DENIED**, and Applicant's Request for Reconsideration is **DENIED**.

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
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.

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

RE: METVIXIA™ (methyl aminolevulinate hydrochloride)
FDA Docket No.: 2007E-0001

Attention: Beverly Friedman

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

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JUN 0 8 2006

OFFICE OF PETITIONS

In re Patent of Korneluk et al.	:	
Patent No. 6,994,957	:	Decision on Request for Reconsideration
Issue Date: February 7, 2006	:	of Patent Term Adjustment
Application No. 08/913,322	:	and Notice of Intent to Issue
Filing Date: September 12, 1997	:	Certificate of Correction
Attorney Docket No. 07891/013001	:	

This is a decision in response to the "Application for Patent Term Adjustment Under 37 C.F.R. § 1.705," filed April 10, 2006, which in essence requests that the Patent Term Adjustment for the above-identified patent be set at one hundred fifty-nine (159) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred fifty-nine (159) days.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed with the Notice of Allowance on March 29, 2005, stated the patent term adjustment to date was fifty-one (51) days. The application matured into Patent No. 6,994,957 on February 7, 2006. The printed patent shows a revised Patent Term Adjustment of 39 days. The revised adjustment determination was calculated as follows:

> The initial determination of PTA of 59 days was increased by 108 days for Office delay in issuing the patent, but reduced by 120 days due to the filing of a "miscellaneous incoming letter" by applicant on June 22, 2005.

Patentee disputes the 120 day reduction of record. Patentee states no papers were filed after the Notice of Allowance which might serve as the basis for a reduction.

A review of the record indicates the Office reduced the patent term adjustment by 120 days based on a "Reply to Notice of Allowance" filed with the issue fee. 37 CFR 1.704(c)(10) provides for reductions for certain papers filed after a Notice of Allowance.

Review of the Reply to Notice of Allowance reveals that the Reply is simply a issue fee transmittal letter accompanying the main issue fee transmittal letter (PTOL-85(b)).

Only papers which are likely to cause substantial interference and delay in the patent issue process will result in a reduction under 37 CFR 1.704(c)(10).[1] An issue fee transmittal letter is unlikely to substantially interfere with the issuance of the patent. Therefore, it is concluded that under the circumstances the Reply to Notice of Allowance should not be considered "a failure to engage in reasonable efforts" to conclude processing or examination of an application and should not result in reduction of the patent term adjustment pursuant to 37 CFR 1.704(c)(10).

For the reasons above, the 120 day reduction was unwarranted. The patent term adjustment indicated on the patent should have been one hundred fifty-nine (159) days.

The patent term adjustment indicated on the patent will be corrected to 159 days by way of issuance of a Certificate of Correction pursuant to 35 U.S.C. 254 and 37 CFR 1.322.

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

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by ONE HUNDRED FIFTY-NINE (159) days subject to any disclaimers.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

[1] *See Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance Has Been Mailed*, 1247 OG 111 (June 26, 2001).

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 6,994,957 B2

DATED : February 7, 2006

DRAFT

INVENTORS : Robert G. Korneluk, Alexander E. MacKenzie, Natalie Roy, George Robertson

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 39 days.

Delete the phrase "by 39 days" and insert – by 159 days--

06 FEB 2004

46

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Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, VA 22314

In re Application of DEBALME et al	:	
U.S. Application No.: 08/913,518	:	
PCT Application No.: PCT/FR97/00101	:	
Int. Filing Date: 17 January 1997	:	DECISION
Priority Date Claimed: 19 January 1996	:	
Attorney Docket No.: 1247-0709-3VF PCT	:	
For: PROCESS AND DEVICE FOR THE MANUFACTURE OF A COMPOSITE MATERIAL	:	

This is in response to applicant's "Petition Under 37 C.F.R. §1.182" filed 12 August 2003.

BACKGROUND

On 17 January 1997, applicant filed international application PCT/FR97/00101, which claimed priority of an earlier France application filed 19 January 1996. A copy of the international application was communicated to the USPTO from the International Bureau on 24 July 1997. The twenty-month period for paying the basic national fee in the United States expired on 19 September 1997.

On 18 September 1997, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an English translation of the international application.

On 19 November 1997, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 03 November 1999, applicant filed a request for a Continued Prosecution Application.

On 11 July 2001, applicant filed a request for a Continued Prosecution Application.

On 14 January 2003, applicant filed a Request for Continued Examination along with a request to enter a previously un-entered amendment.

On 12 February 2003, the examiner issued a non-final rejection in which several claims were rejected as being based upon new matter introduced by said amendment.

On 12 August 2003, applicant filed the present petition under 37 CFR 1.182 along with an affidavit under 37 CFR 1.132.

DISCUSSION

The petition states that the English translation filed 18 September 1997 contained mistranslations of the international application and that a proper translation would provide support for the subject matter introduced by amendment. However, even assuming the statements contained in the 37 CFR 1.132 affidavit are correct, applicant has not yet provided a complete and proper English translation of the international application as required by 35 U.S.C. 371(c)(2). Entry of such proper translation will be considered upon submission.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is DISMISSED without prejudice.

If reconsideration on the merits of the 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 "Renewed Petition Under 37 CFR 1.182". Extensions of time are available under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Bryan Tung
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: 703-308-6614
Facsimile: 703-308-6459

12 APR 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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1940 Duke Street
Alexandria, VA 22314

In re Application of DEBALME et al	:	
U.S. Application No.: 08/913,518	:	
PCT Application No.: PCT/FR97/00101	:	
Int. Filing Date: 17 January 1997	:	DECISION
Priority Date Claimed: 19 January 1996	:	
Attorney Docket No.: 1247-0709-3VF PCT	:	
For: PROCESS AND DEVICE FOR THE MANUFACTURE OF A COMPOSITE MATERIAL	:	

This is in response to applicant's "Renewed Petition Under 37 C.F.R. §1.182" filed 06 April 2004.

BACKGROUND

On 17 January 1997, applicant filed international application PCT/FR97/00101, which claimed priority of an earlier France application filed 19 January 1996. A copy of the international application was communicated to the USPTO from the International Bureau on 24 July 1997. The twenty-month period for paying the basic national fee in the United States expired on 19 September 1997.

On 18 September 1997, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1) and an English translation of the international application.

On 19 November 1997, the DO/EO/US mailed a Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903).

On 03 November 1999, applicant filed a request for a Continued Prosecution Application.

On 11 July 2001, applicant filed a request for a Continued Prosecution Application.

On 14 January 2003, applicant filed a Request for Continued Examination along with a request to enter a previously un-entered amendment.

On 12 February 2003, the examiner issued a non-final rejection in which several claims were rejected as being based upon new matter introduced by said amendment.

On 12 August 2003, applicant filed a petition under 37 CFR 1.182 along with an affidavit under 37 CFR 1.132.

On 06 February 2004, this Office mailed a decision dismissing the 12 August 2003 petition.

On 06 April 2004, applicant filed the present renewed petition under 37 CFR 1.182 along with a new English language translation of the international application.

DISCUSSION

The petition states that the English translation filed 18 September 1997 contained mistranslations of the international application and that a proper translation would provide support for the subject matter introduced by amendment. Applicant has provided an English language translation of the international application as required by 35 U.S.C. 371(c)(2), and applicant's explanation for the previous mistranslations is accepted.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.182 is GRANTED.

The Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903) mailed 19 November 1997 is hereby VACATED.

The application is being forwarded to the DO/EO/US for processing in accordance with this decision including: (1) entry of the English language translation filed 06 April 2004 and (2) preparation and mailing of a new Notification of Acceptance of Application Under 35 U.S.C. 371 (Form PCT/DO/EO/903), which should indicate a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 06 April 2004. Thereafter, the application will be returned to the examining group for consideration of the prior art in view of the newly filed translation.

Bryan Tung
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: 703-308-6614
Facsimile: 703-308-6459

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Paper No. 17

JOSEPH S. TRIPOLI PATENT OPERATIONS
GE&RCA LICENSING MANAGEMENT OPERATIONS
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PRINCETON, NJ 08543

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OCT 2 1 2002

OFFICE OF PETITIONS

In re Application of :
Gilles Boccon-Gibod et al :
Application No. 08/913,803 : ON PETITION
Filed: September 22, 1997 :
Attorney Docket No. RCA87865 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 15, 2002, 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)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 24, 2001, 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 December 25, 2001.

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 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)). This petition lacks items (1) above.

As to item (1), a reply to the Office action mailed on September 24, 2001, has not been submitted. A proper reply to the Office action must be submitted with the petition to revive for the petition to be granted.

Pursuant to petitioner's authorization, Deposit Account No. 07-0832 was charged a $1,280.00 for the petition to revive an unintentionally abandoned application.

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

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

By mail: U.S. Patent and Trademark Office
Box DAC, P.O. Box 2327
Arlington, VA 22202

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 Commissioner
for Patent Examination Policy

cc: FRANCIS A. DAVENPORT
2 INDEPENDENCE WAY
SUITE 2
PRINCETON, NJ 08540

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 20

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OFFICE OF PETITIONS

In re Application of :
Gilles Boccon-Gibod et al :
Application No. 08/913,803 : ON PETITION
Filed: September 22, 1997 :
Attorney Docket No. RCA87865 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed November 6, 2002, to revive the above-identified application.

The petition is **GRANTED**.

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

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

The application file is being forwarded to Technology Center AU 2615.

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

cc: FRANCIS A. DAVENPORT
2 INDEPENDENCE WAY
SUITE 2
PRINCETON, NJ 08540

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)
6136326	2000-10-24	08914190	1998-01-30	63454-0106

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	/DavidMGange/	Date (YYYY-MM-DD)	2008-12-15
Name	David M. Gange	Registration Number	55198

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. 6136326
Issue Date: October 24,2000
Application No. 08914190
Filed: January 30,1998
Attorney Docket No. 63454-0106

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

This is a decision on the electronic petition, filed December 15,2008 ,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 15,2008 . 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.

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Paper No. 36

Robert E. Strauss
74527 Moss Rose Drive
Palm Desert, CA 92260

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MAY 1 5 2003

OFFICE OF PETITIONS

In re application of
Michael J. Stevenson et al.
Application No. 08/914,536
Filing Date: August 19, 1997
Attorney Docket No. STEVE-106

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 21, 2003, to revive the above-identified application.

The petition is Granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the Non-Final Office action mailed May 16, 2002, 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 August 17, 2002.

Any questions concerning this matter may be directed to Latrice Bond at (703) 308-6911.

The file is being forwarded to Technology Center AU 1762 for further processing.

Latrice Bond

Latrice Bond
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
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In re Patent No. 6147801
Issue Date: November 14,2000
Application No. 08914586
Filed: August 18,1997
Attorney Docket No. PHA-21.950A

:
: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 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 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)
6147801	2000-11-14	08914586	1997-08-18	

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	/Michael E Marion/	Date (YYYY-MM-DD)	2009-05-18
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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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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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL BUSINESS CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI OH 45224

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OFFICE OF PETITIONS

In re Application of	:	
Michael-Kenneth Cerreta et al	:	
Application No. 08/914,743	:	DECISION GRANTING PETITION
Filed: August 19, 1997	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 6586R	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 27, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue fee ;(2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of September 22, 2004, is accepted as having been unintentionally delayed.

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

This matter is being referred to Patent Publication.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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~~DEC 19 2003~~ V6I1)

DEC 16 2003

ANDREW S. BRENC
ARNOLD AND PORTER
555 TWELFTH STREET, NW
IP DOCKETING DEPARTMENT, ROOM 1126B
WASHINGTON, DC 20004-1206

In re application of
Masaaki Goto et al.
Serial No. : 08/915,004
Filed : August 20, 1997
Attorney Docket No.: 16991.010

: DECISION ON PETITION

This communication is in response to applicants' petition filed June 19, 2003 to determine the status of the above identified application. Since this is simply an inquiry rather than a petition, no petition fee is due.

A review of the file history shows that prosecution of the application was suspended on March 21, 2001. Since that time applicants have filed 5 inquiries regarding the status of the application, but have not received any reply.

Prosecution of the application remains suspended due to a possible interference. Within a few days the application will be forwarded to the Board of Patent Appeals and Interferences (BPAI) to determine whether an interference will be declared.

Future inquiries should be made by telephone and directed to the examiner, Michael Pak, at 703-305-7038. The phone number for the BPAI is 703-308-9797.

The petition fee of $130 will be refunded to Deposit Account No. 50-2387, as directed.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA, 22313-1450, or by telephone at (703) 308-4205 or by facsimile transmission at (703) 746-5006.

Jasemine C. Chambers

Jasemine Chambers
Director, Technology Center 1600

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ATTN: IP DOCKETING DEPT.
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WASHINGTON DC 20004-1206

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OFFICE OF PETITIONS

In re Application of	:
Goto et al.	:
Application No. 08/915,004	: Decision on Petition for
Filed: August 20, 997	: Patent Term Extension
Attorney Docket No. 16991.010	:
For: NOVEL PROTEINS AND METHODS	:
FOR PRODUCING THE PROTEINS	:

The above-identified application has been forwarded to the undersigned for consideration on the "Petition to the Commissioner," which was received on November 7, 2005, for the above-identified application. Petitioner argues that the patent should have an extension of 1,825 days due to delays in the Office for suspensions for a potential interference. See 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701. Further requests or a request for reconsideration of this decision for patent term extension, must be filed under 37 CFR 1.182 or 37 CFR 1.183, and include the required fee.

The petition is dismissed.

Petitioner notes that the above-identified application was filed on August 20, 1997, allowed on September 7, 2005, but was delayed due to suspensions in prosecution for a potential interference. Petitioner states that the application was suspended from November 23, 1998 through September 7, 2005, therefore the patent should be extended by 1,825 days for the period of suspension. Petitioner states that the first suspension for a potential interference was mailed by the Office on November 23, 1998. Petitioner states that following the initial suspension, numerous status inquiry letters were submitted and that the application was suspended again for potential interferences on August 31, 1999, June 8, 2000 and March 21, 2001. Petitioner states that during this time numerous status inquiry letters were submitted and that a Petition to the Commissioner requesting information was submitted on June 13, 2003 and that a decision on December 16, 2003, stated that the application was still suspended for a potential interference. Petitioner states that after several more status inquiries, a Notice of Allowance was mailed on September 7, 2005. Petitioner argues that under 37 CFR 1.701(c)(1)(ii), the patent term should be extended the number of days in the period beginning on the date prosecution in the application was suspended by the PTO due to interference proceedings and ending on the date of the termination of the suspension. Petitioner argues that applicant is entitled to 1,825 days of patent term extension, not the 1,631 days of extension as stated in the Notice of Allowance.

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000. 35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

Petitioner argues that under 37 CFR 1.701(c)(1)(ii), the patent term should be extended the number of days in the period beginning on the date prosecution in the application was suspended by the PTO due to interference proceedings and ending on the date of the termination of the suspension. While prosecution in the application was suspended, the suspension was due to a potential interference with applicant's application and another patent or application, not to await the result of interference in another application. As a result, the provisions of 37 CFR 1.701(a)(1) and (c)(1)(ii) do not apply. The provisions of 37 CFR 1.701(c)(1)(ii) apply to suspensions by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a) and in this instance there were no interference proceedings. Both the statute and the rule require there to be "a proceeding under section 135(a)." Petitioner's argument that he is entitled to patent term extension for the period of suspension under 37 CFR 1.701(a)(1) is not persuasive.

The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154. The delay in issuance of petitioner's application is regretted.

The Notice of Allowance and Issue Fee Due mailed September 7, 2005, incorrectly indicated that the patent to issue from the application 08/915,004 was eligible for a 1,631-day extension when no extension is due. The Office records have been corrected to indicate that the application is eligible for a 0-day extension.

After mailing of this decision, the above-identified application will be returned to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by zero **(0) days.**

The petition fee ($200) under 37 CFR 1.18(e) for filing an application for patent term adjustment has been refunded to Petitioner's Deposit Account No. 50-2387.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.

Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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WASHINGTON DC 20004-1206

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OFFICE OF PETITIONS

In re Application of :
Goto et al. :
Application No. 08/915,004 : Decision Denying Petition for
Filed: August 20, 1997 : Patent Term Extension
For: NOVEL PROTEINS AND METHODS :
FOR PRODUCING THE PROTEINS :

The above-identified application has been forwarded to the undersigned for consideration on the "Petition under 37 CFR 1.182 or 1.183," which was received on May 16, 2006.

The petition is **denied**.

Background

Petitioner filed a petition as a "Petition to the Commissioner" on November 7, 2005, for an extension of the patent term. Petitioner requested an additional 194 days of patent term extension due to delays in the Office for suspensions for potential interferences to increase the patent term extension from 1,631 days to the maximum of 5 years or 1,825 days. On March 17, 2006, the petition was dismissed and the patent term extension was reduced to 0 days.

Petitioner states that the above-identified application was filed on August 20, 1997, and allowed on September 7, 2005, but was delayed due to suspensions in prosecution due to interference proceedings. Petitioner further states that the application was suspended from November 23, 1998 through September 7, 2005, and argues the patent should be extended by 1,825 days for the period of suspension. Petitioner states that the Office mailed the first suspension for a potential interference on November 23, 1998. Petitioner states that following the initial suspension; the application was suspended again for potential interferences on August 31, 1999, June 8, 2000 and March 21, 2001. Petitioner states that during this time status inquiry letters were submitted on June 8, 1999, July 16, 1999, August 4, 1999, March 8, 2000, April 10, 2000, May 10, 2000, December 11, 2000, March 5, 2001, July 31, 2002, October 7, 2002, December 20, 2002, March 5, 2003 and May 27, 2003. In addition, petitioner states that a Petition to the Commissioner requesting status information was filed on June 19, 2003 and that the decision (on December 16, 2003) stated that the application was still suspended for a potential interference. Petitioner states that after several more status inquiries filed on

April 28, 2004, and July 1, 2004, a Notice of Allowance was mailed on September 7, 2005. The Notice of Allowability and Issue Fee Due mailed on September 7, 2005 indicated that the patent term extension was 1,631 days. Petitioner filed a petition on November 7, 2005 requesting that the patent term extension should be 1,825 days, however the petition was dismissed in the Office's decision mailed March 17, 2006, and the patent term extension was reduced to 0 days.

Petitioner states that under 37 CFR 1.701(c)(1), the patent term should be extended the number of days in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings and ending on the date of the termination of the suspension. Petitioner contends that applicant is entitled to 1,825 days of patent term extension. Petitioner asserts that the Office's position cannot be sustained because it completely ignores the Office's publication entitled "United States Patent Practice in a Post Uruguay Round World." For support of his position, Petitioner relies on the phrases "applications suspended by the Office due to interference determination but not involved in interference may be extended for period of suspension" and "patent term extensions compensate for delays beyond control of applicant" in the Office's publication. Petitioner asserts that while the Office professes that there was no interference proceeding regarding this application, no other explanation is provided for the almost seven-year delay. Petitioner asserts that he understands that the suspension is part of the Office processing pursuant to 35 U.S.C. 135(a) and requests clarification if otherwise.

Petitioner notes that the Office's decision mailed March 17, 2006 stated that the Board of Patent Appeals and Interferences (BPAI) would be involved in determining whether or not an interference would be declared in this application. Petitioner asserts that proceedings by the BPAI in determining whether an interference will be declared are interference proceedings under 35 U.S.C. 135(a), thus the Office cannot maintain that the suspensions initiated by the Office were not interference proceedings. Petitioner indicates that the Office interprets 37 CFR 1.701(c)(1)(ii) to apply only to await the result of an interference in another application. Petitioner asserts that 37 CFR 1.701(c) is for the number of delays for each interference that the application was involved, and also for the number of days during the suspension period due to interference proceedings under 35 U.S.C. 135(a) not involving the application, e.g., the delay before an interference is declared or the delay where an interference is eventually not declared. Petitioner asserts that the Office has interpreted 37 CFR 1.701(c)(1)(ii) to only apply to situations so rare, as to not even be in the Manual of Patent Examining Procedure (MPEP). Petitioner asserts that the patent term extension for this application should be the maximum of 5 years regardless of whether the suspensions were due to a potential interference or to await the result of an interference in another application. Petitioner respectfully notes that the PAIR records indicate that the suspension on March 21, 2001was due to an interference in another application. Petitioner also notes that contrary to the PAIR record, the decision mailed on March 17, 2006 expressly states that the suspension "was not to await the result of an interference in another application."

Applicable Statutes and Regulation

35 U.S.C. 135 Interferences

(a) Whenever an application is made for a patent which, in the opinion of the Director, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Director shall give notice of such declaration to the applicants, or applicant and patentee, as the

case may be. The Board of Patent Appeals and Interferences shall determine questions of priority of the inventions and may determine questions of patentability. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Director may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved in the patent, and notice of such cancellation shall be endorsed on copies of the patent distributed after such cancellation by the Patent and Trademark Office. ***

35 U.S.C. 154. Contents and term of patent (in effect from June 8, 1995 to May 28, 2000)
***

(b) TERM EXTENSION.-

(1) INTERFERENCE DELAY OR SECRECY ORDERS.-If the issue of an original patent is delayed due to a proceeding under section 135(a) of this title, or because the application for patent is placed under an order pursuant to section 181 of this title, the term of the patent shall be extended for the period of delay, but in no case more than 5 years.

(2) EXTENSION FOR APPELLATE REVIEW.-If the issue of a patent is delayed due to appellate review by the Board of Patent Appeals and Interferences or by a Federal court and the patent is issued pursuant to a decision in the review reversing an adverse determination of patentability, the term of the patent shall be extended for a period of time but in no case more than 5 years. A patent shall not be eligible for extension under this paragraph if it is subject to a terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(3) LIMITATIONS.-The period of extension referred to in paragraph (2)-

(A) shall include any period beginning on the date on which an appeal is filed under section 134 or 141 of this title, or on which an action is commenced under section 145 of this title, and ending on the date of a final decision in favor of the applicant;

(B) shall be reduced by any time attributable to appellate review before the expiration of 3 years from the filing date of the application for patent; and

(C) shall be reduced for the period of time during which the applicant for patent did not act with due diligence, as determined by the Commissioner.

(4) LENGTH OF EXTENSION.-The total duration of all extensions of a patent under this subsection shall not exceed 5 years.

37 CFR 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

(a) A patent, other than for designs, issued on an application filed on or after June 8, 1995, is entitled to extension of the patent term if the issuance of the patent was delayed due to:

(1) interference proceedings under 35 U.S.C. 135(a); and/or

(2) the application being placed under a secrecy order under 35 U.S.C. 181; and/or

(3) appellate review by the Board of Patent Appeals and Interferences or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision reversing an adverse determination

of patentability and if the patent is not subject to a terminal disclaimer due to the issuance of another patent claiming subject matter that is not patentably distinct from that under appellate review.

(b) The term of a patent entitled to extension under paragraph (a) of this section shall be extended for the sum of the periods of delay calculated under paragraphs (c)(1), (c)(2), (c)(3), and (d) of this section, to the extent that these periods are not overlapping, up to a maximum of five years. The extension will run from the expiration date of the patent.

(c)(1) The period of delay under paragraph (a)(1) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

(i) with respect to each interference in which the application was involved, the number of days, if any, in the period beginning on the date the interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and

(ii) the number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Patent and Trademark Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(2) The period of delay under paragraph (a)(2) of this section for an application is the sum of the following periods, to the extent that the periods are not overlapping:

(i) the number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181;

(ii) the number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 1.193 in the application under secrecy order and ending on the date the secrecy order and any renewal thereof was removed;

(iii) the member of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order and any renewal thereof was removed; and

(iv) the number of days, if any, in the period beginning on the date of notification under § 5.3(c) and ending on the date of mailing of the notice of allowance under § 1.311.

(3) The period of delay under paragraph (a)(3) of this section is the sum of the number of days, if any, in the period beginning on the date on which an appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal Court in an appeal under 35 U.S.C. 145.

(d) The period of delay set forth in paragraph (c)(3) shall be reduced by:

(1) any time during the period of appellate review that occurred before three years from the filing of the first national application for patent presented for examination; and

(2) any time during the period of appellate review, as determined by the Commissioner, during which the applicant for patent did not act with due diligence. In determining the due diligence of an applicant, the Commissioner may examine the facts and circumstances of the applicant's actions during the period of appellate review to determine whether the applicant exhibited that degree of timeliness as may reasonably be expected from, and which is ordinarily exercised by, a person during a period of appellate review.

(e) The provisions of this section apply only to original patents, except for design patents, issued on applications filed on or after June 8, 1995, and before May 29, 2000.

Opinion

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000. 35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for administrative delays in applications filed on or after May 29, 2000.

The above-identified application was filed on August 20, 1997. Accordingly, the application is entitled to patent term extension based upon the conditions in 35 U.S.C. § 154(b) in effect on June 8, 1995. The current provisions of 35 U.S.C. § 154(b) became effective on May 29, 2000 and do not apply because the current version of 35 U.S.C. § 154(b) only applies to applications filed on or after May 29, 2000. Pursuant to 35 U.S.C. § 154(b) in effect on June 8, 1995, an applicant can receive patent term extension only if there was an appellate review, interference or a secrecy order delay as set forth in the statute. The statute limits the Office's authority to grant patent term extension to only those situations stated in the statute.

In order to implement 35 U.S.C. 154(b) (in effect between June 8, 1995 and May 28, 2000), the Office promulgated 37 CFR 1.701(c)(1), which, consistent with the statute, requires an interference proceeding under 35 U.S.C. 135(a) to be eligible for patent term extension. Although prosecution was suspended in the above-identified application, the suspensions were due to a potential interference either with or involving one or more other applications. The suspensions were not for the reason that the subject application was involved in an interference, or to await the result of an interference proceeding in another application. As a result, the provisions of 37 CFR 1.701(c)(1)(i) do not apply as the subject application was not involved in an actual interference. Additionally, the provisions of 37 CFR 1.701(c)(1)(ii) do not apply because this section applies to suspensions by the "Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application," and in this instance there were no such other interference proceedings. Therefore, Petitioner's arguments that he is entitled to patent term extension for the periods of suspensions under 37 CFR 1.701(c)(1)(ii) are not persuasive.

Petitioner's argument that 37 CFR 1.701(c)(1) does not require the delay to be due an actual "interference proceeding" is not persuasive. The statute clearly states that a patent is entitled to term extension if issuance of the patent is delayed due to a "proceeding under section 135(a)." According to the statute, patent term extension (for interferences purposes) can only be accrued by applications for delays due to a proceeding under 35 U.S.C. 135(a) (interference proceeding). An interference under 35 U.S.C. 135(a) does not begin until the BPAI declares an interference, an interference is a proceeding conducted before the BPAI. See MPEP, 8th edition, revision 3, §§ 2300.01 and 2301.02 or MPEP, 8th edition, revision 4, §§ 2301 - 2301.02. Petitioner's argument that the only reasonable interpretation of 37 CFR 1.701(c)(1) is intended to apply not only to actual interference proceedings, but also to the proceedings which are specifically instituted to facilitate the declaration of an interference, such as the suspension in the above-identified application is not persuasive because the statute clearly limits accrual of patent term extension to delays due to a "proceeding under section 135(a)." Petitioner's argument that the Office's interpretation of 37 CFR 1.701(c)(1)(ii) is so rare as not to even be provided for in the MPEP (MPEP 709) is not persuasive. Applications which are suspended to await the outcome of an interference are discussed in the MPEP. See MPEP 8th edition, revision 3, § 2315.01 or MPEP 8th edition, revision 4, § 2307.03.

Petitioner's argument that the Office's publication supports his position is not persuasive. With respect to patent term extensions for applications not involved in interference, the publication is clear that an interference proceeding must still take place because of the line "Interference Proceedings Under § 135." With respect to Petitioner's argument concerning patent term extension compensating for delays beyond control of the applicant, patent term extension does not compensate applicant for all delays but only those authorized by the statute. Petitioner's argument that there is no other reason for the almost seven-year delay besides an interference proceeding is not persuasive. The Office Actions indicate that the application was suspended for a potential interference. Petitioner's argument that PAIR indicates that the suspension on March 21, 2001 was to await the result of an interference in another application is not persuasive. While PAIR indicates that the suspensions were to await the result of an interference, the Office action mailed on March 21, 2001 clearly indicates that the suspension was due to a potential interference. The entry in the PAIR record, which caused patent term extension to be calculated was a clerical entry error. Furthermore, all of the Office Actions and all of the status inquiries submitted by applicant indicated that the suspensions were for a potential interference. Petitioner's argument that the decision mailed by the Office on December 16, 2003, which indicated that the BPAI would be involved in determining whether or not an interference would be declared and that the application was forwarded to the BPAI, is not persuasive. Even accepting Petitioner's argument that the application was forwarded to the BPAI sometime after December 16, 2003, the application was returned to the Technology Center in January 2004 according to Petitioner's status inquiry received on April 28, 2004, without an interference being declared. Because an interference was not declared, patent term extension (for interferences purposes) cannot be accrued. Petitioner contends that it is not fair give the instant application zero (0) days of patent term extension due to the suspensions, as there is no other explanation for the long delay. While the delay in the allowance and issuance is regretted, the Office has no authority to grant an extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154(b). It is noted that Congress (in 1999) did not make the patent term adjustment provisions in current 35 U.S.C. 154 retroactively available.

Decision

The prior decision which refused to grant a petition under 35 U.S.C. 154(b) and 37 CFR 1.701 for patent term extension for the delayed issuance of the patent for the above-identified patent application has been reconsidered. For the reasons stated herein, and in the previous decision, however, a patent term extension in this case cannot be granted under 35 U.S.C. § 154(b) and 37 CFR §§ 1.183 and 1.701. Therefore, the petition is **denied**.

The Office's electronic record (Patent Application and Location Monitoring system (PALM)) has been adjusted to show that zero (0) patent term extension has been accrued to the above-identified application.

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* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $400 fee for the petition has been charged to petitioner's Deposit Account.

The issuance of the patent has not been delayed due to the processing of this petition since all the review and analysis associated with the issuance of this decision has been performed from retrieving documents found in the Office's image file wrapper (IFW) system.

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

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.

Robert Spar
Director
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 5963035
Issue Date: October 5,1999
Application No. 08915656
Filed: August 21,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed September 9,2008 ,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 September 9,2008 . 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)
5963035	1999-10-05	08915656	1997-08-21	3900-003

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	/Larry L. Coats/	Date (YYYY-MM-DD)	2008-09-09
Name	Larry L. Coats	Registration Number	25620

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
Washington, D.C. 20231
www.uspto.gov

Paper No. 16

STRIKER, STRIKER & STENBY
103 EAST NECK ROAD
HUNTINGTON, NY 11743

SEP 7 2001

In re Application of)
POHLMANN)
Application No. 08/916,106)
Filed: August 21, 1997) DECISION ON PETITION.
For: Arrangement for Determining the Penetration Depth)
on Putting in Place Supporting Elements into a Water Bed)

This is a decision on the petition, filed May 2, 2001, to withdraw the holding of abandonment of Application No. 08/306,204, filed on May 6, 1999, which petition is being treated as a petition to withdraw the holding of abandonment of Application No. 08/916,106.[1]

The petition is **DISMISSED**.

This application was held abandoned for failure to timely file new formal drawings as required in the Notice of Allowability mailed on September 13, 1999. A Notice of Abandonment was mailed on May 25, 2000.

Petitioner asserts that formal drawings were timely filed on October 4, 1999. To support this assertion, petitioner has submitted a copy of a postcard receipt which bears an Office Date stamp of October 8, 1999, and a copy of a transmittal form for formal drawings which bears a Certificate of Mailing dated October 4, 1999.

The formal drawings submitted on October 8, 1999 are not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is

[1]Application No. 08/306,204 neither is abandoned nor was filed on May 6, 1999. While Application No. 09/306,204 was filed on May 6, 1999, it is not abandoned. Application No. 09/306,204 is a division of Application No. 08/916,106, filed on August 21, 1997, which application is abandoned for failure to file new formal drawings. Accordingly, it is presumed that the petition is directed to the last mentioned application.

concluded that formal drawings were received in the PTO on October 8, 1999 but lost after receipt thereof.

However, the postcard receipt listing formal drawings for "Ser. No. 08/916,106" also refers to "Docket # 701." According to PTO records, applicant used "Docket No. 701" to refer to Appl. No. 09/306,204 and not to Appl. No. 08/916,106. Furthermore, the copy of the transmittal form references "Serial No. 09/306,204, filed May 6, 1999," and nowhere indicates formal drawings intended for Appl. No. 08/916,106, filed August 21, 1997. An inspection of PTO records[2] indicates that a Notice of Allowance for Appl. No. 09/306,204 was mailed on September 14, 1999. Accordingly, it is not clear from the record that the formal drawings filed on October 8, 1999 were intended for Application No. 08/916,106 and not for Application No. 09/306,204.

For the above stated reasons, the showing of record fails to establish that formal drawings intended for Application No. 08/916,106 were timely filed on October 4, 1999. Since the petitioner has not made the requisite showing, the petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mailing date of this decision.

Hien H. Phan, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

HP/JC

[2] The application file for Appl. No. 09/306,204 is not currently available.

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STRIKER STRIKER & STENBY
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HUNTINGTON NY 11743

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SEP 06 2007

OFFICE OF PETITIONS

In re Application of
Reink Pohlmann
Application No. 08/916,106
Filed: August 21, 1997
Attorney Docket No.: 701

ON PETITION

This is a decision on the petition filed July 30, 2003 and the subsequent request filed January 4, 2007 under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application.

The petition under 37 CFR 1.181 is **GRANTED**.

The application was held abandoned on December 14, 1999, for failure to timely file corrected drawings in response to the Notice of Allowability mailed September 13, 1999. Accordingly, a Notice of Abandonment was mailed May 25, 2000.

Petitioner asserts that 3 sheets of drawings were filed October 4, 1999 and has submitted, inter alia, a copy of the drawings and a post card receipt date stamped October 4, 1999 by the USPTO as proof of timely response to the Notice of Allowability mailed September 13, 1999. No petition fee is necessary and none has been charged.

This matter will be referred to the Publishing Division.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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Paper No.

ALSTON & BIRD, LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

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MAR 01 2010

In re Patent No. 7,455,264	:	
Sean Wakayama	:	LETTER REGARDING
Issue Date: November 25, 2008	:	PATENT TERM ADJUSTMENT
Application No. 08/917,480	:	and
Filed: August 26, 1997	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 038190/291118	:	CERTIFICATE OF CORRECTION

This is in response to the Request for a Certificate of Correction filed April 20, 2009.

The request is **GRANTED**.

On November 25, 2008, application No. 08/917,480 matured into U.S. Patent No. 7,455,264, with a Patent Term Adjustment of 1826 days. This was incorrect. At the time of the mailing of the Notice of Allowance, the patent term adjustment (PTA) under 35 U.S.C. 154(b) to date was 2099 days. There were no further Office or applicant delays after the mailing of the notice of allowance. On November 5, 2008, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) stating that the patent would issue with a patent term adjustment of 2099 days. Further, the PALM and PAIR system both indicated that the correct PTA was 2099 days. However, due to printing error, the patent issued with an incorrect PTA. Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 CFR § 1.322 is appropriate.

No fee is required and none has been charged.

Patentees are advised that if they were contesting the specific administrative delays granted applicants or the specific

reductions for applicants' failure to engage in reasonable efforts to conclude processing or examination of the application, then such request must be timely filed under 37 CFR § 1.705(b) or (d), as appropriate.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by TWO THOUSAND NINETY-NINE (2099) days subject to any disclaimers.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,455,264 B2

DATED : November 25, 2008 **DRAFT**

INVENTOR(S) : Wakayama

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1826 days

Delete the phrase "by 1826 days" and insert – by 2099 days--

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

Gaby L. Longsworth
1100 New York Avenue N.W.
Suite 600
Ashington, D.C. 20005-3934

Mail Date : June 28, 2002

In Re Application of
BEDNARIK et al
Serial No.: 08/917,710
Filed: August 26, 1997
Attorney's Docket No.: 1488.04500001

Petition Decision

This is in respond to "Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181" filed July 27, 2001.

On June 23, 1999, an Office action was mailed. On July 27, 2001, the present petition was filed.

The file and applicant's statement have been carefully reviewed. On October 4, 2001, applicant provided a copy of the prosecution history to the Office for reconstruction of the file. It appears that four Status Inquiries were filed on September 3, 1999, March 20, 2000, September 20, 2000, and May 21, 2001 respectively. None of the inquires was answered. Applicant indicated that the Office action dated June 23, 1999 was never received. Although the application is technically abandoned, but no Notice of Abandonment has been mailed. Thus instant application is still in pending status. Accordingly, the petition is dismissed.

The application is being forwarded to examiner after mailing of this letter for consideration of the amendment filed March 3, 1999. Applicant's efforts assisting the reconstruction of the file is appreciated. Prosecution delay is regretted.

Petition is Dismissed.

Should there be any questions with respect to this decision, please contact Cecilia Tsang, by mail address to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703) 308-0254 or by facsimile transmission at (703) 308-3890.

Cecilia Tsang for
Bruce M. 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
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OFFICE OF PETITIONS

HERSHKOVITZ & ASSOCIATES
1725 I STREET NW
SUITE 300
WASHINGTON, DC 20006

In re Patent No. 6,762,935 :
Issue Date: July 13, 2004 :
Application No. 08/917,761 : LETTER
Filed: July 31, 2001 :
Attorney Docket No. P43262 :

This is in response to the paper filed February 17, 2006, which is being treated as a request under 37 CFR 1.27(g)(2) to remove small entity status in the above-identified patent.

In accordance with the request, status as a Small Entity has been removed.

As an aside, if requester herein 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.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
08/917,761	08/27/1997	2746	831	2269-003	10	50	4

CONFIRMATION NO. 5201

CORRECTED FILING RECEIPT

OC000000019109781

24023
MCGUIREWOODS LLP
ONE JAMES CENTER
901 EAST CARY STREET
RICHMOND, VA 23219-4030

Date Mailed: 06/05/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

CLAUDIO R. BALLARD, LLOYD HARBOR, NY;

Power of Attorney:

S Misrock--18872
Donald Goodell--19766
Joseph Colaianni--20019
Berj Terzian--20060
Harry Jones III--20280
Gerald Flintoft--20823
David Weild III--21094
Barry Rein--22411
Isaac Jarkovsky--22713
Charles McKenney--22795

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 01/13/1998

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US08/917,761

Projected Publication Date: None, application is not eligible for pre-grant publication

Non-Publication Request: No

Early Publication Request: No

Title

REMOTE IMAGE CAPTURE WITH CENTRALIZED PROCESSING AND STORAGE

Preliminary Class

380

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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HERSHKOVITZ & ASSOCIATES
2845 DUKE STREET
ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

In re Patent No. 5,910,988	:	
Issue Date: June 8, 1999	:	
Application No. 08/917,761	:	DECISION ON PETITION
Filed: August 27, 1997	:	
Attorney Docket No. P43262	:	

This is a decision on the petitions under 37 CFR 1.182, filed September 20, 2006, requesting issuance of a duplicate Letters Patent for the above-identified patent and for expedited consideration of the petition for duplicate Letters Patent.

The petitions are **GRANTED**.

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

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a duplicate Letters Patent may be directed Krystal Paige in the Publishing Division at (703) 308-9250, Ext. 139.

A copy of this decision is being faxed to Publishing Division for issuance of a duplicate Letters Patent.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Krystal Paige, South Tower, 8th Floor (Fax No. (571) 270-9937

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 5826714
Issue Date: October 27,1998
Application No. 08918049
Filed: August 25,1997
Attorney Docket No. 97-06227

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

This is a decision on the electronic petition, filed May 3,2007 ,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 May 3,2007 . 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)
5,826,714	1998-10-27	08/918,049	1997-08-25	14934.000

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	/Dexter McFarlin/	Date (YYYY-MM-DD)	2007-05-02
Name	Dexter L. McFarlin	Registration Number	59832

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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DIW Mar-06

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

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MAR 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Nathasingh et al. :
Application No. 08/918,194 : DECISION ON PETITION
Filed: 21 August, 1997 :
Atty Docket No. 30-4358(4710 :

This is a decision on the petition filed on 16 December, 2005, under 37 CFR 1.137(b), [1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 6 November, 2002, for failure to timely reply to the final Office action mailed 5 August, 2002, which set a three (3) month shortened statutory period for reply.

---

[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 a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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)).

No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 19 October, 2004.

Petitioner has filed a Request for Continued Examination (RCE) and an amendment as the required reply under 37 CFR 1.114.

The RCE fee is being charged to counsel's deposit account.

This application is being referred to Technology Center 2832 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
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. 5847222
Issue Date: December 8,1998
Application No. 08918347
Filed: August 26,1997
Attorney Docket No. TSG-003

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

This is a decision on the electronic petition, filed November 26,2008 ,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 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 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)
5847222	1998-12-08	08918347	1997-08-26	ID 040308 - 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)	2008-11-25
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.

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Paper 9

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OFFICE OF PETITIONS
A/C PATENTS
ON PETITION

In re Application of
Akashi, et al.
Application No. 08/918,537
Filed: 22 August, 1997
Attorney Docket No. STAN-064

This is a decision on the petitions to revive the above-identified applications filed, 30 November, 2000, under 37 C.F.R. §1.137,[1] subsection (a), and supplemented on 22 March, 2001, under 37 C.F.R. §1.137, subsection (b).

The petition under 37 C.F.R. §1.137(b) is **GRANTED**, and pursuant to Petitioner's request, the petition under 37 C.F.R. §1.137(a) is **withdrawn and not considered**.[2]

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[1] The regulations at 37 C.F.R. §1.137 provide:

§1.137 Revival of abandoned application or lapsed patent.

(a) *Unavoidable.* Where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph 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 §1.17(l);

(3) 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 this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (c) of this section.

(b) *Unintentional.* Where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph 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 §1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (c) of this section.

(c) In a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995, any petition to revive pursuant to this section 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 period of abandonment of the application. Any terminal disclaimer pursuant to this paragraph must also apply to any patent granted on any continuing application that contains a specific reference under 35 U.S.C. §§120, 121, or 365(c) to the application for which revival is sought. The provisions of this paragraph do not apply to lapsed patents.

(d) Any request for reconsideration or review of a decision refusing to revive an abandoned application or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of §1.136.

(e) A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section so as to be pending for a period of no longer than twelve months from its filing date. Under no circumstances will a provisional application be regarded as pending after twelve months from its filing date.

[47 Fed. Reg. 41277, Sept. 17, 1982, effective Oct. 1, 1982; para. (b) 48 Fed. Reg. 2713, Jan. 20, 1983, effective Feb. 27, 1983; paras.(a) - (c), paras. (d) & (e) added, 58 Fed. Reg. 44277, Aug. 20,1993, effective Sept. 20, 1993; para. (c) revised, 60 Fed. Reg. 20195, Apr. 25, 1995, effective June 8, 1995; revised, 62 Fed. Reg. 53131, Oct.10, 1997, effective Dec. 1, 1997] .

[2] In the petition alleging unintentional delay filed on 22 March, 2001, Petitioner requested that the Office "substitute" that filing for the November petition alleging unavoidable delay, and the Office is interpreting that request as a withdrawal of the November petition.

The record reflects that:

- Petitioner failed to respond timely and properly to a Notice to File Missing Parts (Filing Date Granted) mailed on 2 December, 1997, and due (absent extension of time) on or before 2 February, 1998;
- Petitioner acknowledges that the unsigned oath/declaration submitted upon filing contained the incorrect correspondence address submitted by and for Petitioner;
- the Notice to File Missing Parts was mailed to the address so designated (in error) by Petitioner;
- the instant application went abandoned at midnight 10 August, 2000;
- Notice of Abandonment was mailed on 16 November, 2000, to the address so designated (in error) by Petitioner;
- on 30 November, 2000, Petitioner filed a Petition to Revive under 37 C.F.R. §1.137(a)[3] and a reply to the Notice of Missing Parts;
- on 22 March, 2001, Petitioner filed the petition under 37 C.F.R. §1.137(b);[4]
- the copy of the Notice of Change of Address, submitted on 30 November, 2000, but dated 29 March 2000, and not otherwise present in the record, has been accepted as Petitioner's Notice of Change of Address, and Office records updated to reflect that change.

The record (including the petitions filed on 30 November, 2000, and 22 March, 2001) does not necessitate a finding that the delay between midnight 2 February, 1998, and 22 March, 2001, was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on Petitioner's duty of candor and good faith when accepting Petitioner's representation that the delay in filing the response was unintentional.[5]

This application is being forwarded to OIPE for further processing.

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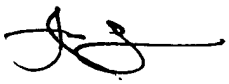
[3] An application is "unavoidably" abandoned only where Petitioner (or Petitioner's counsel) takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, the response is not timely received in the Office. That is, in the context of ordinary human affairs the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

[4] Pursuant to Petitioner's authorization, the $55.00 fee for the petition under 37 C.F.R. §1.137(a) is credited and the $620.00 fee for the petition under 37 C.F.R. §1.137(b) charged to Deposit Account 50-0815.

[5] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

Telephone inquiries should be directed to Petitions Attorney John J. Gillon, Jr., at (703) 305-9199.



John J. Gillon, Jr.
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Office of the Deputy Commissioner
for Patent Examination Policy

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Paper 15

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OFFICE OF PETITIONS

In re Application of
Harrison
Application No. 08/919,450
Filed: 28 August, 1997
Attorney Docket No.: 10547.15US1

ON PETITION

This is a decision on the petitions:

- filed on 29 January, 2001, and refiled via FAX on 4 November, 2002, to Withdraw the Holding of Abandonment under 37 C.F.R. §1.181,[1] and

- filed on 6 November, 2002, alternatively under 37 C.F.R. §1.137(b)[2] to revive the above-identified application.

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[1] The regulations at 37 C.F.R. §1.181 provide, in pertinent part:

§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 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 or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. * * *

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Brief 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 declaration (and exhibits, if any) must accompany the petition.

© When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, 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 decision upon the matters averred in the petition, supplying a copy thereof 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. * * *

(f) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as untimely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings. * * *

[2] Effective December 1, 1997, the provisions of 37 C.F.R. §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 C.F.R. §1.137(b). a grantable petition filed under the provisions of 37 C.F.R. §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 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. 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 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

For the reasons set forth below, the petition:

- to revive under 37 C.F.R. §1.137(b) is **GRANTED**;[3] and
- treated as a request to Withdraw the Holding of Abandonment under 37 C.F.R. §1.181 is **DISMISSED**.[4]

BACKGROUND

The record indicates that:

- it appeared that Petitioner failed to pay timely the Issue Fee in response to the Notice of Allowance and Issue Fee Due mailed on 6 July, 1999, and due under a non-extendable deadline on or before 6 October, 1999;
- the application was deemed abandoned after midnight 6 October, 1999;
- the Notice of Abandonment was mailed on 29 December, 1999;
- in contrast, Petitioner's date-stamped (5 October, 1999) receipt card confirms that a request for a continued prosecution application (CPA) was timely filed and Office records indicate that Petitioner was charged the fee therefor;
- however, Petitioner appears to have failed to respond to the Notice of Abandonment until on or about 29 January, 2001--thirteen months after the abandonment was Noticed--at which time Petitioner sought to have the Holding of Abandonment withdrawn;
- on 6 November, 2002, Petitioner filed the petition (with fee authorization)to revive under 37 C.F.R. §1.137(b), and set forth therein the required statement of unintentional delay (the statement), and cited therein to the previously filed CPA (the reply).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

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[3] Pursuant to Petitioner's authorization, the petition fee ($1,280.00) is charged to Deposit Account 01-1156.

[4] Pursuant to Petitioner's authorization, the petition fee ($130.00) is charged to Deposit Account 01-1156.

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[5]

The regulations at 37 C.F.R. §1.137 set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally 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.[6]

Delays in responding properly raise the question whether delays are unavoidable.[7] 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).[8] Petitioner must be diligent in attending to the matter.[9] Moreover, it long has been the position of the Office that the use of the filing periods (such as in 37 C.F.R. §1.137(b)) as an "extension of time" is an "abuse" of the procedures for reviving abandoned applications, and is contrary to the meaning and intent of the regulation.[10] The Office has indicated that petitions to revive must be filed promptly after the applicant becomes aware of the abandonment.[11] Failure to do so does not demonstrate 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

---

[5] 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.

[6] 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.

[7] 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).

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

[9] 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.

[10] See: In re Application of S, 8 USPQ2d 1630, 1632 (Comm'r Pats. 1988). Where there is a question whether the delay was unintentional, the petitioner must meet a burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. §1.137(b). See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[11] 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.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[12]

Allegations as to Withdrawal
of the Holding of Abandonment

Petitioner makes no showing as to a basis for the delay of thirteen months between the mailing of the Notice of Abandonment and the filing of a petition to have the holding withdrawn[13] as contrast with the regulatory requirement that the matter be raised within two (2) months of the action complained of.

While there may have been a lapse or mistake by counsel, it in no way satisfies the Pratt showing required herein.

More than 35 years ago the Court of Customs and Patent Appeals warned practitioners in Lorenz v. Finkl[14] that "ordinary prudence" demands that they take "appropriate action" as directed by the Office, and practitioners disregard this warning at peril to their client's matters. (Moreover, as long as the attorney/agent has not acted to deceive the client,[15] the act(s) or omissions of the attorney/agent are imputed wholly to the applicant/client who hired the attorney/agent.[16])

The courts have determined the construct for properly supporting a request to withdraw a holding of abandonment.[17]

As is clear, Petitioner fails to satisfy the burdens set forth in Delgar v. Schulyer. Withdrawal of the holding of abandonment is not appropriate and hereby is **dismissed**.

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[12] 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.

[13] See: *inter alia*, "Resetting Period for Reply and Remailing and Remailing Office Communications when Outgoing Office Mail is Delayed" (PDF) at: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/kuninmemos.htm

[14] Lorenz v. Finkl, 142 USPQ 26, 27-28 (CCPA 1964).

[15] When an attorney intentionally conceals a mistake he has made, thus depriving the client of a viable opportunity to cure the consequences of the attorney's error, the situation is not governed by the stated rule in Link for charging the attorney's mistake to his client. In re Lonardo, 17 USPQ2d 1455 (Comm'r. Pat. 1990).

[16] The actions or inactions of the attorney/agent must be imputed to the petitioners, who hired the attorney/agent to represent them. Link v. Wabash Railroad Co., 370 U.S. 626, 633-634, 82 S.Ct. 1386, 1390-91 (1962). The failure of a party's attorney to take a required action or to notify the party of its rights does not create an extraordinary situation. Moreover, the neglect of a party's attorney is imputed to that party and the party is bound by the consequences. See Huston v. Ladner, 973 F.2d 1564, 23 USPQ2d 1910 (Fed Cir. 1992); Herman Rosenberg and Parker-Kalon Corp. v. Carr Fastener Co., 10 USPQ 106 (2d Cir. 1931).

[17] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

Allegation of Unintentional Delay

Petitioner has filed a petition and fee under 37 C.F.R. §1.137(b), and stated therein 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."

Therefore, the petition under 37 C.F.R. §1.137(b) hereby is **granted**.

This matter is forwarded to Technology Center 2700 for processing of the CPA and further examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-9199.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 24

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OFFICE OF PETITIONS

In re Application of Clifford Harrison Application No. 08/919,450 Filed: August 28, 1997 Attorney Docket No. 018972.0441 Title: SYSTEM AND METHOD FOR COMPUTER-AIDED TECHNICIAN DISPATCH AND COMMUNICATION	DECISION DISMISSING PETITION UNDER § 1.48(a) and § 1.183

This is a decision on the "PETITION UNDER 37 CFR 1.47 AND 37 CFR 1.183 AND DECLARATION OF FACTS IN SUPPORT THEREOF," filed May 14, 2004.

The above-identified application was filed on August 28, 1997. Clifford Harrison was named as sole inventor. On May 14, 2004, the instant request under § 1.48(a) was filed to amend the inventorship to add joint inventors, Emery Weber and Phillip Bush. § 1.48(a) requires:

> (1) A request to correct the inventorship that sets forth the desired inventorship change;
>
> (2) A statement from each person being added as an inventor and from each person being deleted as an inventor that the error in inventorship occurred without deceptive intention on his or her part;
>
> (3) An oath or declaration by the actual inventor or inventors as required by § 1.63 or as permitted by §§ 1.42, 1.43 or § 1.47;
>
> (4) The processing fee set forth in § 1.17(I); and
>
> (5) If an assignment has been executed by any of the original named inventors, the written consent of the assignee (see § 3.73(b) of this chapter).

The petition as filed May 14, 2004 clearly satisfies requirements (1), (4) and (5). The petition specifically requests the addition of Weber and Bush as inventors, and includes a check for the processing fee. Further, petitioner encloses a written consent of assignee, and a 3.73(b) statement.

However, as to requirements (2) and (3), the petition does not include a statement from added inventor Weber and the declaration submitted is not signed by inventors Harrison and Weber.

§ 1.48(a) requires a statement from each inventor being added or deleted that the inventorship error occurred without deceptive intention. The statement need not be a verified statement (see MPEP § 605). On very infrequent occasions, the requirements of 37 CFR 1.48(a) have been waived upon the filing of a request and fee under 37 CFR 1.183 (along with the request and fee under 37 CFR 1.48(a)) to permit the filing of a statement by less than all the parties required to submit a statement. In re Cooper, 230 USPQ 638, 639 (Dep. Assist. Comm'r Pat. 1986). However, such a waiver will not be considered unless the facts of record unequivocally support the correction sought. In re Hardee, 223 USPQ 1122, 1123 (Comm'r Pat. 1984). As 37 CFR 1.48(a) is intended as a simple procedural remedy and does not represent a substantive determination as to inventorship, issues relating to the inventors' or alleged inventors' actual contributions to conception and reduction to practice are not appropriate for consideration in determining whether the record unequivocally supports the correction sought[1].

Thus, as to requirements (2) and (3), petitioner's request is being treated as a petition for waiver of the requirements 1) for a statement from the person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part and 2) that each of the actual inventors reexecute the declaration. Receipt of the fee ($390) for such consideration is acknowledged ($260 check and $130 charged to Deposit Account No. 50-2428, as authorized[2]).

Unfortunately, petitioner has not met the requirements for waiver. Petitioner has not shown that inventor Weber cannot be reached or found, after diligent efforts, to sign the statement

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[1] An available remedy to obtain correction of inventorship where waiver of a required statement is not available to correct the inventorship in a particular application is to refile the application naming the correct inventive entity. A request under 37 CFR 1.48(a) would not then be required in the newly filed application as no correction would be needed. Furthermore, a request under 37 CFR 1.48(a) would also not be required in the prior application that was refiled, since the prior application will be abandoned. Benefit of the parent application's filing date would be available under 35 U.S.C. 120 provided there is at least one inventor overlap between the two applications. (Note: a sole-to-sole correction would not obtain benefit under 35 U.S.C. 120).

[2] See MPEP 201.03 Where waiver under 37 CFR 1.183 is requested in relation to a requirement under 37 CFR 1.48(a), a processing fee under 37 CFR 1.48(a) and a petition fee under 37 CFR 1.183 are required. Similarly, where in addition to a request under 37 CFR 1.48, two petitions under 37 CFR 1.183 are presented, e.g., one requesting waiver of a requirement under 37 CFR 1.48 and the other requesting waiver of the reexecution of an oath or declaration under 37 CFR 1.64, three fees are required (one for the request filed under 37 CFR 1.48 and two for the petitions filed under 37 CFR 1.183).

or to execute the declaration. Nor has petitioner shown that inventor Harrison cannot be found or reached after diligent effort to reexecute the declaration. The attempts shown to locate inventors Emery Weber and Clifford Harrison are not sufficient to show diligent effort. Petitioner has provided copies of Internet search results for the former phone numbers and addresses of the inventors (reverse searches for phone numbers and addresses) and a search by email address. However, there does not appear to be evidence of a search query by inventor name. Nor is there evidence of an attempt to determine the inventors forwarding address from the postal service or through public records, and to send the application papers to such addresses for consideration by the inventors. See MPEP 409.03(d).

In fact, a search of the EZFIND Combined Person Locator Nationwide available at www.lexis.com reveals possible addresses where both inventors Weber and Harrison can be reached. Specifically, the results indicate that a Emery James formerly of 17618 Hoyt Pl, Parker CO 80134-7552, resides at 9400 E. Iliff Avenue 413, Denver CO 80231. Likewise, the results indicate that a Clifford Harrison formerly of 240 Kearney Street, Denver CO 80220-5987, has resided at 7100 Evans Avenue, Denver CO 80224-2450. Accordingly, further efforts are warranted to reach and/or locate the inventors at those addresses.

If further attempts to contact the inventors at the above addresses or to obtain forwarding addresses or to locate the non-signing inventor by other means such as through E-mail, telephone, or the Internet continue to fail, then applicant will have provided the necessary proof required under 37 CFR 1.47 that the inventor cannot be reached. Details of the efforts to locate the non-signing inventors should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicant should submit documentary evidence such as the results of any mailings to the above-addresses and the results of any further E-mail or Internet search.

Of course, if the inventors are located, then a showing of presentation to them of the application papers and their subsequent refusal is required for waiver.

In view thereof, the petition under 37 CFR 1.183 and thus, 1.48(a) must be **DISMISSED**.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision to be considered timely. 37 CFR 1.181(f).

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: (703) 872-9306

ATTN: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: Effective June 5, 2004, patent correspondence delivered by hand or delivery services, **other than the USPS**, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0309 (or effective September 28, 2004 at (571) 272-3282).

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

Paper No. 27

GREENBERG TRAURIG, LLP
77 WEST WACKER DRIVE
SUITE 2500
CHICAGO, IL 60601-1732

COPY MAILED

NOV 1 8 2004

OFFICE OF PETITIONS

In re Application of Clifford Harrison, Emery Weber and Phillip Bush Application No. 08/919,450 Filed: August 28, 1997 Attorney Docket No. 018972.0441 Title: SYSTEM AND METHOD FOR COMPUTER-AIDED TECHNICIAN DISPATCH AND COMMUNICATION	DECISION GRANTING PETITION UNDER § 1.48(a) and § 1.183

This is a decision on the "REQUEST TO RECONSIDER THE PETITION UNDER 37 CFR 1.47 ..." filed September 20, 2004.

The above-identified application was filed on August 28, 1997. Clifford Harrison was named as sole inventor. The request to add inventors Emery Weber and Phillip Bush was made on petition filed May 14, 2004.

However, by decision mailed July 27, 2004, the petition was dismissed for failure to either meet or waive requirements (2) and (3) of § 1.48. The petition did not include a statement from inventor Weber that the error in inventorship occurred without deceptive intention on his part or 2) a declaration re-executed by each of the actual inventors (signatures of Weber and Harrison were missing).

On instant renewed petition, petitioner provided a statement from inventor Weber. Moreover, petitioner submitted additional evidence to show that inventor Harrison could not be reached or found, after diligent efforts, to sign the statement or to execute the declaration.

In addition, petitioner submitted a declaration identifying each of the actual inventors executed by inventor Weber and resubmitted such a declaration executed by inventor Bush.

Accordingly, the waiver is granted.

In view thereof, the petition under 37 CFR 1.48(a) is **GRANTED**.

A corrected filing receipt, reflecting the change in inventorship, is enclosed.

The application is being returned to Technology Center AU 3625 for further action.

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
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Paper No.

FOLEY & LARDNER LLP
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

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OCT 0 2 2006

OFFICE OF PETITIONS

In re Application of	:	
O'Gorman et al.	:	DECISION ON APPLICATION
Application No. 08/919,501	:	FOR
Filed: August 28, 1997	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	
SALK2190 (088802/5001)	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705," filed June 7, 2006. Applicants request that the initial determination under 35 USC 154(b) be corrected from seven hundred sixty-nine (769) days to one thousand three hundred ninety-eight (1398) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one thousand three hundred ninety-eight (1398) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On March 16, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application[1]. The Notice stated that the patent term adjustment

[1] By virtue of the filing of a continued prosecution application (CPA) filed under 37 CFR 1.53(d) on September 29, 2000, the application became entitled to the benefits of the patent term adjustment provisions of 35 U.S.C. 154(b) and 37 CFR 1.702 through 1.705.

(PTA) to date is 769 days. On June 7, 2006, applicants timely[2] submitted an application for patent term adjustment (with required fee). Applicants assert that an additional period of adjustment of 629 days should be credited due to inaction by the Office from June 25, 2004 (4 months after the February 25, 2004 BPAI decision in which the Examiner was reversed) until the mailing of the Notice of Allowance (on March 16, 2006).

Applicants state that the patent is not subject to a terminal disclaimer.

37 CFR 1.702(a)(3) provides that the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

> Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where at least one allowable claim remains in the application;

37 CFR 1.703(a)(5) provides that:

> The number of days, if any, in the period beginning on the day after the date that is four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 where at least one allowable claim remains in the application and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

As stated in the Final Rule[3] and in pertinent part in MPEP 2731,

> For a Board of Patent Appeals and Interferences decision to be a "decision by the Board of Patent Appeals and Interferences under [35 U.S.C.] 134" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii) (and 1.703(a)(5)), the decision

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[2] PALM records indicate that the Issue Fee payment was also received on June 7, 2006.

[3] See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

must sustain or reverse the rejection(s) of the claim(s) on appeal. For a Board of Patent Appeals and Interferences decision to be a "decision by the Board of Patent Appeals and Interferences under [35 U.S.C.] 135" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii) (and 1.703(a)(5)), the decision must include a decision on the patentability of the claims or priority of invention. A remand or other administrative order by the Board of Patent Appeals and Interferences (even if by a merits panel) is not a "decision" within the meaning of 35 U.S.C. 154(b)(1)(A)(iii)(and 1.703(a)(5)).

The phrase "final decision" in 1.703(a)(5) means that: (1) the decision is the last decision in the review by the Board of Patent Appeals and Interferences (or by a Federal court); and (2) the decision does not require further action by the applicant to avoid termination of proceedings as to the rejected claims. Thus, a Board of Patent Appeals and Interferences decision containing a new ground of rejection under 1.196(b) requires action by the applicant to avoid termination of proceedings as to the rejected claims and is thus not considered a "final decision" for purposes of 1.703(a)(5). The phrase "final decision," however, does not require that the decision be final for purposes of judicial review (e.g., a Board of Patent Appeals and Interferences decision reversing the rejection of all of the claims on appeal is not "final" for purposes of judicial review, but (absent a subsequent decision by the Board of Patent Appeals and Interferences) is a "final decision" for purposes of 1.703(a)(5)).

The phrase "allowable claims remain in the application" for purposes of 35 U.S.C. 154(b)(1)(A)(iii) means that after the decision there is at least one pending claim (for purposes of statutory construction, "words importing the plural include the singular" (1 U.S.C. 1)) that is not withdrawn from consideration and is not subject to a rejection, objection, or other requirement. This applies in the following situations: (1) at least one claim is allowable (not merely objected to) at the time the examiner's answer is mailed and is not canceled before, or made subject to a rejection as a result of, the appellate review; or (2) when all of the rejections applied to at least one claim are reversed, and such claim is not

made subject to a rejection, as a result of the appellate review. For example:

(1) If claims 1 and 2 (both independent) are pending, the decision affirms the rejection of claim 1, and claim 2 was indicated as allowable prior to the appeal, "allowable claims remain in the application" for purposes of 35 U.S.C. 154(b)(1)(A)(iii).

(2) If claims 1 and 2 are pending, the decision affirms the rejection of claim 1, and claim 2 was objected to by the examiner prior to the appeal as being allowable except for its dependency from claim 1, "allowable claims" do not "remain in the application" for purposes of 35 U.S.C. 154(b)(1)(A)(iii) (claim 2 is not allowable because there is an outstanding objection to it).

(3) If claims 1 and 2 are pending, the decision affirms the rejection of claim 1 and reverses the rejection of claim 2, "allowable claims remain in the application" for purposes of 35 U.S.C. 154(b)(1)(A)(iii)(claim 2 is "allowable" within the meaning of 1.703(a)(5) because there is no outstanding objection or requirement as to it until the examiner issues a notice under section 1214.06, paragraph (I)(B) of the Manual of Patent Examining Procedure (7th ed.1998) (Rev. 1, Feb. 2000)(MPEP)).

A review of the record confirms that such a final decision by the BPAI was issued on February 25, 2004 and that allowable claims remained in the application, and that the Office did not respond with the mailing of a notice of allowance until March 16, 2006, four months and 629 days later. Thus, applicants are correct that entry of an additional period of adjustment of 629 days pursuant to §§ 1.702(a)(3) and 1.703(a)(5) is warranted.

It is noted that the courtesy copy of the Appeal Brief was entered in the image file wrapper with its date of receipt, July 13, 2004. There is no indication in the record that this affected calculation of the patent term adjustment (or that this was improper for a courtesy copy). As can be seen in the copy of revised PALM screen enclosed with this decision, there is properly no such entry in the PTA calculations for the courtesy copy.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one thousand three hundred ninety-eight (1398) days.

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

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. Any further period of adjustment accrued pursuant to 37 CFR 1.702(a)(4) and 1.702(b) will be reflected in the patent term adjustment shown on the issue notification letter mailed approximately three weeks prior to the issuance of the patent.

Applicants are reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704 (April 22, 2004).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen

Day : Sunday
Date: 10/1/2006

Time: 11:43:52

PALM INTRANET

PTA Calculations for Application: 08/919501			
Application Filing Date:	08/28/1997	PTO Delay (PTO):	864
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	95
Post-Issue Petitions:	0	Total PTA (days):	1398
PTO Delay Adjustment:	629		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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71	03/16/2006	MAIL NOTICE OF ALLOWANCE			
70	03/16/2006	MAIL EXAMINER'S AMENDMENT			
69	03/15/2006	ISSUE REVISION COMPLETED			
68	03/15/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
67	03/14/2006	EXAMINER'S AMENDMENT COMMUNICATION			
66	03/02/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
65	02/23/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
64	01/19/2006	CASE DOCKETED TO EXAMINER IN GAU			
63	11/30/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
62	06/17/2004	CASE DOCKETED TO EXAMINER IN GAU			
61	06/14/2004	NOTICE OF ALLOWABILITY			
60	02/25/2004	MAIL BPAI DECISION ON APPEAL - REVERSED	864		39
59	02/25/2004	BPAI DECISION - EXAMINER REVERSED			
58	12/10/2003	CONFIRMATION OF HEARING BY APPELLANT			
57	11/19/2003	NOTIFICATION OF APPEAL HEARING			
56	04/30/2003	DOCKETING NOTICE MAILED TO APPELLANT			
55	04/17/2003	ASSIGNMENT OF APPEAL NUMBER			
54	03/31/2003	APPEAL AWAITING BPAI DOCKETING			
53	08/08/2002	MAIL REPLY BRIEF NOTED BY EXAMINER			
52	08/08/2002	X-POST-LEGAL COMPLETE REJECTION			
51	08/08/2002	REPLY BRIEF NOTED BY EXAMINER			
50	08/06/2002	DATE FORWARDED TO EXAMINER			

49	08/05/2002	REPLY BRIEF FILED			
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47	05/20/2002	X-POST-LEGAL COMPLETE REJECTION			
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44	03/18/2002	X-PRE-LEGAL COMPLETE AMENDED CASE			
43	03/18/2002	CORRESPONDENCE ADDRESS CHANGE			
42	03/18/2002	DATE FORWARDED TO EXAMINER			
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38	07/13/2001	MAIL FINAL REJECTION (PTOL - 326)			
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36	05/01/2001	CORRESPONDENCE ADDRESS CHANGE			
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32	10/24/2000	MAIL NON-FINAL REJECTION			
31	10/23/2000	NON-FINAL REJECTION			
30	09/29/2000	PRELIMINARY AMENDMENT			
29	10/06/2000	DATE FORWARDED TO EXAMINER			
28	09/29/2000	CONTINUING PROSECUTION APPLICATION - CONTINUATION (ACPA)			
27	09/29/2000	MAIL EXPRESS ABANDONMENT (DURING EXAMINATION)			
26	09/29/2000	EXPRESS ABANDONMENT (DURING EXAMINATION)			
25	09/29/2000	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	09/29/2000	WORKFLOW - REQUEST FOR CPA - BEGIN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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P.O. Box 1450
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In re Patent No. 5922004
Issue Date: July 13,1999
Application No. 08919548
Filed: August 28,1997
Attorney Docket No. END-441

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

This is a decision on the electronic petition, filed October 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 October 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.

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)
5922004	1999-07-13	08919548	1997-08-28	

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

☐ 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	/J. Gary Mohr/	Date (YYYY-MM-DD)	2008-10-17
Name	J. Gary Mohr	Registration Number	27575

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

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.
08/919,947	08/29/1997	RICHARD J. RICHARDSON	310030-234	7955

21836 7590 12/17/2002

HENRICKS SLAVIN AND HOLMES LLP
SUITE 200
840 APOLLO STREET
EL SEGUNDO, CA 90245

EXAMINER
WARD, JOHN A

ART UNIT	PAPER NUMBER
2875	

DATE MAILED: 12/17/2002

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

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

HENDRICKS, SLAVING & HOLMES LLP
840 Apollo Street, Ste. 200
El Segundo, CA 90245-4737

In re Application of:
Richard J. Richardson
Application No. 08/919,947
Filed: August 29, 1997
For: LIGHTING CIRCUIT, LIGHTING SYSTEM METHOD AND APPRATUS.

DECISION ON REQUEST OF SUSPENSION OF ACTION

This is a decision on the petition under 37 C.F.R. § 1.103, filed September 16, 2002 to suspension of action of the above identified application for a period of three months.

Petitioner requests that the above-identified application Suspend action on the above mentions application for a period of three months.

Accordingly, the petition is **GRANTED**.

The application is being held in suspension for a period not to exceed three months, or Until December 16, 2002

Sandra L. O'Shea, Supervisory Patent Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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. 5902315
Issue Date: May 11,1999
Application No. 08919975
Filed: August 28,1997
Attorney Docket No. END433

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

This is a decision on the electronic petition, filed October 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 October 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.

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)
5902315	1999-05-11	08919975	1997-08-28	

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

☐ 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	/J. Gary Mohr/	Date (YYYY-MM-DD)	2008-10-17
Name	J. Gary Mohr	Registration Number	27575

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

DARIN J. GIBBY
TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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JAN 0 5 2005

OFFICE OF PETITIONS

In re Patent No. 5,876,201 :
Issue Date: March 2, 1999 :
Application No. 08/919,979 : ON PETITION
Filed: August 28, 1997 :
Patentee: Audrey J. Wilson, et al. :

CORRECTED DECISION

This is a decision on the petition filed July 27, 2003, under 37 CFR 1.137(b), which is being properly treated as a petition under 37 CFR 1.378(c) to reinstate the above-identified patent.

The petition is **GRANTED**.

The decision mailed July 9, 2003 is hereby vacated for the reason stated below.

Petitioner submitted the instant petition form under 37 CFR 1.137(b) along with the petition fee of $650. Since the patent expired for failure to timely pay the 3.5 year maintenance fee, the appropriate relief should have been a petition to reinstate under 37 CFR 1.378(c). A petition under § 1.378(c) requires payment of the 3.5 year maintenance fee in the amount of $445 as well as a surcharge of $1640. This Office inadvertently did not charge the proper fees to petitioner's deposit account. In view thereof, the 3.5 year maintenance fee of $445 and the $1640 surcharge will be charged to petitioner's deposit account as authorized. The § 1.137(b) petition fee will be credited back to petitioner's deposit account. Accordingly, the patent is reinstated under the provisions of 37 CFR 1.378(c).

The Office wishes to apologize to petitioner for this error and any inconvenience caused to petitioner is regretted.

The patent file is being forwarded to Files Repository.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
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

OIPE IAP45
MAY 03 2006
PATENT & TRADEMARK OFFICE

Paper No. 25

David G. Wille, Esq.
Baker Botts L.L.P.
2100 Ross Avenue
Suite 600
Dallas TX 75201-2980

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AUG 0 5 2002

OFFICE OF PETITIONS

In re Application of :
Kathryn A. Howard :
Application No. 08/920,433 : ON PETITION
Filed: August 29, 1997 :
Attorney Docket No. 43-97-001 :

This is a decision on the petition under 37 CFR 1.182, filed May 21, 2002, to change the name of the inventor from "Kathryn A. Rosenthal" to -- Kathryn A. Howard -- .

The petition is **granted**.

Office records have been corrected to reflect the inventor's change of name. A corrected filing receipt which reflects the inventor's change of name accompanies this decision on petition.

This application is being returned to Technology Center AU 2123.

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy
(703) 305-8680

Docket ✓ Wrapper ✓

RVF Docketed N/A

Reference(s)

File no. 014208.1183

UNITED STATES PATENT AND TRADEMARK OFFICE

OTPE 1APR45
MAY 03 2006
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TECHNOLOGY CENTER 2100

Paper No. 28

David G. Wille, Esq.
Baker Botts L.L.P.
2001 Ross Avenue
Suite 600
Dallas, TX 75201-2980

In re Application of: Howard
Application No. 08/920,433
Attorney Docket No. 43-97-001
Filed: August 29, 1997
For: METHOD AND SYSTEM OF PROVIDING ACCESS PRIVILEGES TO RECORDS OF MEMBERS OF A COMMUNITY

DECISION ON PETITION FOR SUPERVISORY REVIEW UNDER *37 CFR §1.181*

This is in response to the petition filed on July 29, 2003, under 37 CFR §1.181, to resolve certain issues prior to appeal, including review of the denial of entry of the appeal brief filed July 24, 2002.

A petition under this section must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. The petition filed July 29, 2003 includes elements (1) and (2) above.

The petition is **GRANTED**, to the extent indicated below.

RECENT PROSECUTION HISTORY

On February 27, 2002, the Examiner issue a non-final Office action, rejection all pending claims (1-7 and 9-21) under 35 U.S.C. 102, sections (b) and (e).

On May 24, 2002, a notice of appeal was filed.

On July 24, 2002, an appeal brief was filed by Appellant.

On May 29, 2003, a notification of Non-Compliance with 37 CFR §1.192(c) was mailed to Appellant, indicating that Issue 1, identified in the appeal brief of July 24, 2002, was not an appealable issue, but rather a petitionable one.

On July 9, 2003 an interview summary was mailed to Appellant indicating the substance of the interview held on June 27, 2003.

On July 29, 2003, the instant petition under 37 CFR §1.181 was filed.

RELIEF REQUESTED

The instant petition under 37 CFR 1.181 requests the following relief: to (1) vacate the grounds of rejection because the Examiner has failed to satisfy the requirements of 35 U.S.C. §132 and 37 CFR §1.104 regarding the rejections of claims 1-7 and 9-21 under 35 U.S.C. §102 (b) and (e); or, in the alternative, (2) declare that Appellant's case is ripe for appeal and that Appellants' appeal brief is compliant under 37 CFR §1.192(c) i.e. that the Notification of Non-Compliance, mailed May 29, 2003 was improper.

BASIS OF OPINION

The relevant portions of the Statutes and Rules are reproduced below. Emphasis is added to draw attention to critical phrases.

> MPEP § 1201 states in-part:
> The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a discretionary nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. ***Where the differences of opinion concern the denial of patent claims because of prior art or material deficiencies in the disclosure set forth in the application, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute.***
>
> The line of demarcation between appealable matters for the Board of Patent Appeals and Interferences (Board) and petitionable matters for the Commissioner of Patents and Trademarks should be carefully observed. The Board will not ordinarily hear a question which it believes should be decided by the Commissioner, and the Commissioner will not ordinarily entertain a petition where the question presented is an appealable matter.
>
> § 1.192 Appellant's brief.
> (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.
> (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.
> (9) ***Appendix.*** An appendix containing a copy of the claims involved in the appeal.

With respect to the requested relief to vacate the grounds of rejection (relief item (1) above), set forth in the non-final Office action mailed February 27, 2002 of claims 1-7 and 9-21 under 35 U.S.C. §102 (b) and (e), because "the Examiner has failed to satisfy the requirements of 35 U.S.C. §132 and 37 CFR §1.104 regarding the rejections", a discussion follows. The argument with respect to the issue of whether the Examiner has met his burden of proof of setting forth a *prima facie* case of inherency under 35 USC §102 (b) and (e), although couched in the language of the instant petition, is a question raised that relates to the merits (MPEP 1201) i.e. the propriety of the rejection of the claims of the instant application. Therefore, this issue is subject to appeal, and is properly decided by the Board of Appeals. The Office regrets that appellants have been misdirected on this point.

As such, the issue with respect to the propriety of the rejection (of claims) set forth by Appellant (issue 1 in the appeal brief), will be merged with the issue with respect to the rejection of the claims under the particular references set forth under 35 U.S.C. §102 (b) and (e), by the Examiner (issue 2 in the appeal brief).

With respect to the requested relief that Appellant's case is ripe for appeal (relief item (2) above), the petitioners argue the declaration of a non-compliant appeal brief by the examiner was improper. As set forth above and upon review of the appeal brief filed July 24, 2002, it has been determined that each item, as identified under 37 CFR §1.192(c), is included in the brief. Thus, since the appeal brief filed July 24, 2002 includes each of the items, under the appropriate headings, and since the issues therein are deemed appropriate appealable matter, the brief is determined to be complete and proper.

DECISION

The petition is **GRANTED**, to the extent indicated above. Therefore, the notice of non-compliance is hereby withdrawn. Appellant's appeal brief is proper and has been entered. Accordingly, the alternate relief requested by Petitioner i.e. vacating the grounds of rejection of claims 1-7 and 9-21 under 35 U.S.C. §102 (b) and (e), because the Examiner has failed to satisfy the requirements of 35 U.S.C. §132 and 37 CFR §1.104 regarding the rejections, is ***moot*** in view of the decision set forth above.

The application is being forwarded to the Examiner for appropriate action.

Any inquiries related to this decision may be directed to the undersigned at (703) 308-0885.

Brian L. Johnson, SPRE
Technology Center 2100
Computer Architecture, Software, and Information Security

BLJ: 9/30/04

UNITED STATES PATENT AND TRADEMARK OFFICE

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

David G. Wille
BAKER BOTTS L.L.P.
2001 Ross Avenue, Suite 600
Dallas, Texas 75201

MAILED
JUN 13 2006
Technology Center 2100

In re Application of:
Kathryn A. HOWARD
Application No. 08/920,433
Filed: August 29, 1997
For: METHOD AND SYSTEM OF PROVIDING ACCESS PRIVILEGES TO RECORD OF MEMBERS OF A COMMUNITY

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR §1.181

This is a decision on the petitions, filed 29 August 2005, under 37 CFR §1.181 to withdraw holding of abandonment of the above-identified application.

This application was held abandoned for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance. A Notice of Abandonment was mailed on 16 August 2005.

In support of the petition, petitioner asserts that the Notice of Allowability and the Notice of Allowance and Issue Fee mailed 28 March 2005 were not received, and that no record of the Notice of Allowability and Notice of Allowance and Issue Fee Due were found in the applicant's file for this application. Petitioner supplies (1) a Counsel's Statement of Facts in Support of Petition to Withdraw Holding of Abandonment; (2) a copy of the File History Wrapper for Serial No. 08/920,433; and (3) a copy of the docket record where the nonreceived Notice of Allowance would have been entered had it been received and docketed.

The provided copy of the docket record shows no entry indicating receipt of the Notice of Allowability and Notice of Allowance and Issue Fee Due mailed 23 March 2005.

The relevant portion of MPEP § 711.03(c) states:

> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must

be attached to and referenced in practitioner's statement. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner has met the criteria of set out in MPEP § 711.03(c) for establishing failure to receive the Notice of Allowability and Notice of Allowance and Issue Fee Due mailed 23 March 2005.

For the above, the petition is **GRANTED**. The abandonment is **WITHDRAWN**.

The application is being forwarded to the Technology Center Support Staff to re-mail the Notice of Allowability and Notice of Allowance and Issue Fee Due of 23 March 2005.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

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. 6052052
Issue Date: April 18,2000
Application No. 08920959
Filed: August 29,1997
Attorney Docket No. 95463801

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

This is a decision on the electronic petition, filed July 31,2008 ,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 31,2008 . 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)
6052052	2000-04-18	08920959	1997-08-29	9546.3801

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	/barry l haley/	Date (YYYY-MM-DD)	2008-07-31
Name	Barry L. Haley	Registration Number	25339

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.

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)
6,005,780	1999-12-21	08/921,171	1997-08-29	35878.001

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	/josephleone/	Date (YYYY-MM-DD)	2008-05-30
Name	Joseph T. Leone	Registration Number	37170

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. 6005780
Issue Date: December 21,1999
Application No. 08921171
Filed: August 29,1997
Attorney Docket No. 117-971P

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

This is a decision on the electronic petition, filed May 30,2008 ,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 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 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. 43

WESTERMAN HATTORI DANIELS & ADRIAN
1250 CONNECTICUT AVENUE NW
SUITE 700
WASHINGTON, DC 20036

COPY MAILED

MAR 3 0 2004

OFFICE OF PETITIONS

In re Application of :
Yasunori Inoue et al :
Application No. 08/921,250 : ON PETITION
Filed: August 29, 1997 :
Attorney Docket No. 970813 :

This is a decision on the petition, filed March 26, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 3, 2003, 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 (703) 306-5685.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 1763 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 52605 **Paper No.:** 28

TO SPE OF : ART UNIT 2734

SUBJECT : Request for Certificate of Correction on Patent No.: 6144711

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.

Thank You For Your Assistance

ROCHAUN JOHNSON
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 119

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

6/2/05 2634
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

BEYER WEAVER & THOMAS
P.O. BOX 70250
OAKLAND, CA 94612-0250

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APR 0 6 2006

OFFICE OF PETITIONS

NOTICE

In re Patent No. 6,257,981
Issue Date: July 10, 2001
Application No. 08/922,046
Filed: September 2, 1997
Attorney Docket No. 4164-55

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 no longer qualifies for small entity status. Accordingly, all future fees must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

cc:
MARGER JOHNSON & MCCOLLOM
210 SW MORRISON STREET, SUITE 400
PORTLAND OR 97204

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. 5947797
Issue Date: September 7,1999
Application No. 08922070
Filed: September 2,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed February 22,2008 ,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 February 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.

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)
5947797	1999-09-07	08/922,070	1997-09-02	

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

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	/MIKE BUZZETTI/	Date (YYYY-MM-DD)	2008-02-22
Name	MIKE BUZZETTI		

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

OCT 14 2003

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

Paper No. 39

Testa, Hurwitz & Thibeault, LLP
High Street Tower
125 High Street
Boston, MA 02110

In re Application of	:	DECISION ON PETITION
Robert J. Crowley	:	TO WITHDRAW
Serial No. : 08/922,263	:	HOLDING OF
Filed : September 2, 1997	:	ABANDONMENT
For : Interventional Photonic Energy Emitter System	:	

This is a decision on a request filed via facsimile transmission March 28, 2003, to review the holding of abandonment mailed March 11, 2003, for failure to respond to the Office action mailed July 24, 2002. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response, a copy of a one-month extension of time request, and a copy of a PTO stamped receipt dated November 20, 2002.

In view of the above, the Notice of Abandonment mailed March 11, 2003, is in error and is hereby vacated. The holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response filed November 20, 2002.

Summary: Holding of Abandonment Withdrawn.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (703) 308-0873

ak/10/03/03

756-1723

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.

ROBBINSON INTELLECTUAL PROPERTY LAW OFFICE
PMB 955
21010 SOUTHBANK STREET
POTOMAC FALLS, VA 20165

OIPE JC40 JUN 14 2004 PATENT & TRADEMARK OFFICE

1/7/04.

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Hongyong Zhang et al
Application No. 08/922,363
Filed: September 3, 1997
Attorney Docket No. 0756-1379

This is a decision on the petition under "PETITION TO WITHDRAW", filed December 8, 2003, which is being treated 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 July 17, 2003 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 (703) 306-5685.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2822 for processing of the request for continued examination under 37 CFR 1.114.

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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS
AND TRADEMARKS
Washington, D.C. 20231

Paper No. 14

CHRISTOPHER H. LYNT
7502 TOLL CT.
ALEXANDRIA, , VA 22306

Mailed

MAR 1 3 2000

Director's Office
Group 2700

In re Application of
James R. DeFrancesco, et al.
Application No.: 08/922,462
Filed: September 3, 1997
For: AUTOMATED CREDIT APPLICATION SYSTEM

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record filed February 14, 2000.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney 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 effective date of withdraw being the date of decision and not the date of request, see M.P.E.P. § 402.06. 37 C.F.R. §1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

It is noted that the Request for Withdrawal as Attorney or Agent is only effective for Christopher H. Lynt, since he is the only attorney/agent specifically mentioned in the request and there is no other indication that he is signing on behalf of the other practitioners. It is noted that the Patent and Trademark Office does not recognize law firms as such and the Request as filed is not effective for all practitioners listed in the duly executed Declaration.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2700
Communications & Information Processing
(703) 305-4710

cc: Mr. Robert Evan Sokohl
Sterne, Kessler, Goldstein & Fox, PLLC
1100 New York Ave., N.W.
Washington, D.C. 20005

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 :03/16/07

Patent No. : 7181427 B1
Ser. No. : 08/922,462
Inventor(s) : DEFRANCESCO, JAMES R.
Issued : 02/20/07
Title : **AUTOMATED CREDIT APPLICATION SYSTEM**
Docket No. : 104570-498-NP

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.

Lamonte M. Newsome
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 #112 or (703) 308-8309

GOODWIN PROCTER L.L.P
599 LEXINGTON AVE.
NEW YORK NY 10022

LMN

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
EXCHANGE PLACE
BOSTON MA 02109-2881

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JAN 31 2008

OFFICE OF PETITIONS

In re Application of	:	
DeFrancesco et al.	:	
Application No. 08/922462	:	DECISION
Filing or 371(c) Date: 09/03/1997	:	ON PETITION
Patent No.: 7181427	:	
Issue Date: 02/20/2007	:	
Attorney Docket No.: DLT-002NP	:	

This is a decision on the "Request for Certificate of Correction Under 37 CFR 3.81(B)," filed April 20, 2007, to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction. The delay in treating this petition is regretted.

The Petition is **granted**.

The petition was accompanied by a certificate of correction as required by 3.81(b), and the fee submitted with the present petition. Further, Office assignment records reflect that DealerTrack, Inc., is an assignee of record. As the request complies with the provisions of 37 CFR 3.81(b), it would be appropriate for a certificate of correction to be processed.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

Derek L. Woods
Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : October 11,2007

TO SPE OF : ART UNIT 2144

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/923,105 Patent No.: 6138150

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

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: Okay to enter

WILLIAM VAUGHN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

2144
Art Unit

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

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. 6195800
Issue Date: March 6,2001
Application No. 08923159
Filed: September 4,1997
Attorney Docket No. 6208.89704

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

This is a decision on the electronic petition, filed April 24,2009 ,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 24,2009 . 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)
6195800	2001-03-06	08923159	1997-09-04	FPC2

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	/jameshuntyanceyjr53809/	Date (YYYY-MM-DD)	2009-04-29
Name	JAMES HUNT YANCEY, JR., (Troutman Sanders LLP)	Registration Number	53809

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. 6138237
Issue Date: October 24,2000
Application No. 08923264
Filed: September 4,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed November 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 November 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 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)
6,138,237	2000-10-24	08/923,264	1997-09-04	BIT97-1

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	/Edward W. Porter/	Date (YYYY-MM-DD)	2008-11-24
Name	Edward W. Porter	Registration Number	28892

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.

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)
6,142,666	2000-11-07	08/923,276	1997-09-04	63866CIP(40353)

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	/Howard M. Gitten/	Date (YYYY-MM-DD)	2009-01-08
Name	Howard M. Gitten	Registration Number	32138

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. 6142666
Issue Date: November 7,2000
Application No. 08923276
Filed: September 4,1997
Attorney Docket No. 150-012

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

This is a decision on the electronic petition, filed January 8,2009 ,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 January 8,2009 . 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.

PUMA 1012-1
ESB

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. ____

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

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OFFICE OF PETITIONS

In re Application of
Sethuraman Suresh et al
Application No. 08/923,612
Filed: September 4, 1997
Attorney Docket No. SF/0014.01

: DECISION GRANTING PETITION
: UNDER 37 CFR 313(c)(2)

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 10, 2003 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 the undersigned at (703) 305-8680.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2177 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
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

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Paper No. 27

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

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FEB 24 2004

OFFICE OF PETITIONS

In re Application of
Sethuraman Suresh et al
Application No. 08/923,612
Filed: September 4, 1997
Attorney Docket No. SF/0014.01

: DECISION GRANTING PETITION
: UNDER 37 CFR 313(c)(2)

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

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 10, 2003 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 the undersigned at (703) 305-8680.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2177 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
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).

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MORGAN & FINNEGAN LLP
THREE WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

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SEP 0 7 2006
OFFICE OF PETITIONS

In re Patent No. 5,974,976	:	
Issue Date: November 2, 1999	:	
Application No. 08/924,495	:	DECISION ON PETITION
Filed: August 27, 1997	:	
Attorney Docket No. 0140-4219	:	

This is a decision on the petition under 37 CFR 1.182, filed August 29, 2006, requesting issuance of a duplicate Letters Patent for the above-identified application. This is also being treated as a petition under 37 CFR 1.182 for expedited consideration of the petition for issuance of a duplicate Letters Patent.

The petitions are **granted**.

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3218. Any questions concerning issuance of the duplicate Letters Patent should be directed to Krystal Paige at (703) 308-9250, Ext. 139.

As authorized, a $400 fee has been charged to petitioner's deposit account for each petition under 37 CFR 1.182.

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Krystal Paige, P/OPPD, South Tower 08C32 (FAX 571-273-9756)

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FEB 2 8 2006

OFFICE OF PETITIONS

THELEN REID & PRIEST
CISCO
P.O. BOX 640640
SAN JOSE CA 95164-0640

In re Application of	:	
Richard W. Pratt	:	
Application No. 08/924,785	:	ON PETITION
Filed: September 5, 1997	:	
Attorney Docket No. 785	:	

This is a decision on the petition, filed February 21, 2006, under 37 CFR 1.313(a) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED**.

The above petition is unnecessary. Also, the petition is not in compliance with 37 CFR 1.313(c).

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

This matter is being referred to Patent Publication to oversee review of the drawings filed February 21, 2006.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No. 15

IANDIORIO AND TESKA
260 BEAR HILL ROAD
WALTHAM, MA 02154-1018

MAR 2 2004

In re Application of :
Richardson et al. : DECISION ON PETITION
Application No. 08/925,208 :
Filed: September 8, 1997 :
Attorney Docket No. GJ-195J :

This is a decision on the petition filed June 3, 2003, requesting that the holding of abandonment in the above-identified application be withdrawn and the application forwarded for processing of the Continued Prosecution Application (CPA) as set forth in the decision granting the petition to withdraw from issue mailed September 9, 1999.

The petition to withdraw the holding of abandonment is **MOOT**.

A review of the application file reveals that the application was not forwarded to Technology Center 2800 for processing of the CPA as set forth in the decision to withdraw the above-identified application from issue pursuant to the provisions of 37 CFR 1.313 (b)(5). The application is not abandoned in fact.

The $130.00 petition fee is unnecessary. The request for refund must be submitted in writing to the Office of Finance and accompanied by a copy of this decision.

The application file is being forwarded to the technical support staff for processing the Response and Amendments. From there, it will be returned to the examiner for further prosecution.

Questions regarding this decision should be directed to Jose' G. Dees at (571) 272-1569.

Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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

Mailed: MAR 2 7 2000

JWM
Paper Number 27

In re application of	:	
Tapani J. Vuorinen et al	:	DECISION ON
Serial No. 08/925,321	:	PETITION
Filed: September 8, 1997	:	
For: METHOD OF TREATING CELLULOSIC PULP	:	

This is a decision on the PETITION FOR REVIEW OF THE PROPRIETY OF THE SECOND NOTIFICATION OF NON-COMPLIANCE ISSUED DECEMBER 1, 1999[sic], filed December 10, 1999. The petition requests withdrawal of the examiner's Notification of Non-Compliance with the Requirements of 37 C.F.R. 1.192(c) of November 29, 1999 in which it was held that the APPEAL BRIEF filed May 20, 1999 was not in compliance with 37 C.F.R. 1.192(c) since the claims, which are grouped separately, are not separately argued.

DECISION

A careful review of the application record indicates that the examiner mailed a Letter February 15, 2000 stating that the APPEAL BRIEF of May 20, 1999 is acceptable under 37 C.F.R. 1.192(c) for examination purposes. In light of this action, the instant petition has been rendered moot.

After mailing of this decision the application shall be returned to the examiner for consideration of the APPEAL BRIEF. An office action shall follow in due course.

The Petitions are **DISMISSED**.

Richard V. Fisher

Richard V. Fisher, Director
Technology Center 1700
Chemical and Materials Engineering

Nixon & Vanderhye
1100 North Glebe Road
8th Floor
Arlington, VA 22201

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 5897807
Issue Date: April 27,1999
Application No. 08925351
Filed: September 8,1997
Attorney Docket No. AMNA:012

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

This is a decision on the electronic petition, filed October 1,2007 ,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 October 1,2007 . 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)
5,897,807	1999-04-27	08/925,351	1997-09-08	AGA003

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)	2007-10-01
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

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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PAUL T. CLARK
CLARK & ELBING
101 FEDERAL STREET
BOSTON, MA 02110

In re Application of	:
Denise Faustman	:
Serial No.: 08/925,627	: PETITION DECISION
Filed: September 9, 1997	:
Attorney Docket No.: 00786/036005	:

This is in response to the petition under 37 CFR 1.84(b), filed May 28, 2004, requesting acceptance of black and white photographs as drawings.

The requirement for a petition to utilize black and white photographs as drawings was withdrawn several years ago. Petition is required only for color drawings or photographs. The drawings have been accepted and placed in the file.

The petition is **DISMISSED** as unnecessary in view of the Rules change..

The petition fee paid of $130.00 will be credited to applicant's Deposit Account No. 03-2095, as directed.

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
Director, Technology Center 1600

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 5,977,992

APPLICATION NO.: 08/925,828

ISSUE DATE : 02 NOV 1999

INVENTOR(S) : Hill Branscomb

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

Note On Title Page

[63] Continuation of Application No. 08/243,046, May 16, 1994, Pat. No. 5,684,514, which is a continuation of application No. 08/146,400, Nov. 1, 1993, abandoned, which is a continuation-in-part of application No. 08/000,927, Jan. 6, 1993, abandoned, which is a continuation-in-part of application No. 07/640,489, Jan. 11, 1991, abandoned.

A

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Haynes Beffel & Wolfeld LLP
P.O. Box 366
Half Moon Bay, CA 94019

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

JAN 30 2006

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AT&T Legal Department – Toler
Attn.: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

MAILED

APR 16 2010

In re Application of
David A. Connolly et al
Application No. 08/926,187
Filed: September 9, 1997

: DECISION OFFICE OF PETITIONS
: ON
: PETITION
:

This is a decision on the combined petition filed on May 23, 2009 ("the May 23, 2009 combined petition"), which includes:

- a petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, and
- an alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

This decision also addresses the paper filed on April 1, 2010 entitled "Supplement to Petition to Revive Abandoned Application" ("the April 1, 2010 supplement to the combined petition"), the completed form PTOL-85 entitled "Part B – Fee(s) Transmittal" filed on April 1, 2010 ("the April 1, 2010 issue fee payment"), as well as the statement under 3.73(b) filed on May 23, 2009, and power of attorney and change of correspondence address, also filed on May 23, 2009.

The combined petition filed on May 23, 2009, the April 1, 2010 supplement to the combined petition, the April 1, 2010 issue fee payment, the May 23, 2009 statement under 3.73(b), the May 23, 2009 power of attorney and change of correspondence address, and the record as a whole, are before the Office of Patent Legal Administration for consideration.

The $540 petition fee set forth in 37 CFR 1.17(l) for the present petition under 37 CFR 1.137(a), and the petition fee of $1620 set forth in 37 CFR 1.17(m) for the present petition under 37 CFR 1.137(b), will be charged to deposit account no. 50-2469 as authorized on the May 23, 2009 fees transmittal form, on page 8 of the May 23, 2009 combined petition, and on page 4 of the April 1, 2010 supplement to the combined petition. The $1510 issue fee and the $300 publication fee will also be charged to deposit account no. 50-2469, as authorized by the completed form PTOL -85, entitled "Part B – Fee(s) Transmittal", filed on April 1, 2010.

SUMMARY

The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on May 23, 2009, is **dismissed**. The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**. The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

Best Available Copy

DECISION

The Petition under 37 CFR 1.137(a) to Revive an Unavoidably Abandoned Application

On July 15, 1999, a notice of allowance and issue fee due was mailed by the Office, setting a three-month statutory period for reply. On May 24, 2000, a notice of abandonment was mailed by the Office, stating that the application was abandoned in view of "[a]pplicant'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". The present application was abandoned as of October 16, 1999. The present petition under 37 CFR 1.137(a), however, was not filed until May 23, 2009, nearly ten years later.

In evaluating a petition under 37 CFR 1.137, three periods are considered:[1]

(1) the delay in the reply that originally resulted in the abandonment,
(2) the delay in filing an initial petition under 37 CFR 1.137 to revive the application, and
(3) the delay in filing a *grantable* petition under 37 CFR 1.137 to revive the application.

Regarding period (1), the applicant has provided evidence to show that the delay in the reply that originally resulted in the abandonment of the application may have been unavoidable. Period (3) is not applicable, because the present petition is the initial petition filed under 37 CFR 1.137.[2] Regarding period (2), however, the present petition lacks sufficient evidence to show that the delay in filing the initial petition under 37 CFR 1.137(a) was unavoidable.

The applicant states that the applicant "was aware that the application was abandoned on or about September 16, 2008."[3] However, the applicant has not provided any evidence that the applicant was first notified of the abandonment of the application on this date.[4] Even assuming that the applicant was first notified of the abandonment of the application on September 16, 2008, however, the present petition under 37 CFR 1.137(a) was not filed by the applicant until May 23, 2009, more than eight months later.

MPEP 711.03(C), subsection II D, provides, in pertinent part:

> Where a petition pursuant to 37 CFR 1.137(a) . . . is not filed within 3 months of the date the applicant is first notified that the application is abandoned . . . the Office will require a showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(a) petition was filed was "unavoidable".

---

[1] See MPEP 711.03(c), subsection II D.

[2] For example, if a timely filed petition under 37 CFR 1.137 were dismissed on other grounds, applicant cannot intentionally delay the filing of a renewed petition Applicant must provide a showing that any delay in a renewed, and grantable, petition is either unavoidable (for petitions under 37 CFR 1.137(a)) or unintentional (for petitions under 37 CFR 1.137(b)). See *In re Application of Takao*, 1990 Comm'r Pat. LEXIS 6, 17 USPQ2d 1155 (Comm'r Pat. 1990).

[3] See page 2 of the April 1, 2010 supplement to the combined petition.

[4] While the applicant refers to a September 16, 2008 letter from the law firm of Brinks, Hofer, Gilson, and Lione ("Brinks Hofer"), applicant's former counsel, to the in-house attorney for the applicant, a copy of the letter has not been provided with the present petition.

The applicant has presented evidence that Mr. Prendergast, a former attorney of record, may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer Gilson and Lione ("Brinks Hofer") and from the applicant. The applicant also states that the delay in filing the present petition was due to the time required for Brinks Hofer to complete their internal investigation and provide the results to the applicant, the time required to determine which documents available in the records were falsified and which documents "were true", and the time required for applicant's current representative to review the file and the results of the investigation by Brinks Hofer.[5]

The evidence and statements presented by the applicant may show how the eight-month delay between September 16, 2008, the date that applicant states that he was aware of the abandonment,[6] and May 23, 2009, the filing date of the present petition, was unintentional. However, the applicant has not clearly shown how the *entire* eight-month delay was *unavoidable*. For example, the applicant has not provided evidence of when the applicant was first notified of the abandonment of the application. As another example, the applicant has not provided evidence showing the stage of the investigation on December 16, 2008, i.e., what had been accomplished as of December 16, 2008, three months after the applicant may have been first notified of the abandonment, and why a delay of an additional five months in order to file the present petition was unavoidable.

In addition, a grantable petition under 37 CFR 1.137(a) must be accompanied by (1) a reply to the outstanding Office action, (2) the petition fee set forth in 37 CFR 1.17(l), (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable,[7] and (4) any terminal disclaimer (and fee) required by 37 CFR 1.137(d).

The applicant has submitted, with the present petition filed on May 23, 2009, a payment of the issue fee and publication fee,[8] and a petition fee under 37 CFR 37 CFR 1.17(l), which satisfy items (1) and (2), respectively. Regarding item (4), no terminal disclaimer is required pursuant to 37 CFR 1.137(d), because the present application was filed after June 5, 1995. The applicant has not, however, satisfied item (3), because the applicant has not shown that the *entire* delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable.

Furthermore, where, as here, a petition under 37 CFR 1.137(a) is filed more than one year after the date of the abandonment of the application,[9] the applicant must also provide (see MPEP 711.03(c), subsection II D):

A. further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application; and

---

[5] See page 3 of the April 1, 2010 supplement to the combined petition.
[6] Assuming, again, that the applicant was first notified of the abandonment of the application on that date.
[7] See 35 U.S.C. 133.
[8] See MPEP 711.03(c), subsection II A 1 and the April 1, 2010 issue fee payment.
[9] March 22, 2007.

B. a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative).

As stated above, the applicant has provided further information as to when the applicant became aware of the abandonment of the application, but has not provided information as to when the applicant *first* became aware of the abandonment of the application. In addition, the applicant has not provided a sufficient showing as to how the *entire* delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In determining if the delay was unavoidable, courts have adopted the standard of due care of a reasonably prudent person:

> 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. *In re Mattullath* , 38 App. D.C. 497, 514-15 (1912), quoting and adopting *Ex Parte Pratt*, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).[10]

The applicant provides evidence that Mr. Prendergast may have intentionally misled the applicant regarding the status of the application, [11] and that Mr. Prendergast may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer.[12] The applicant has not, however, provided sufficient evidence that the *entire* delay in discovering the abandoned status of the application, from October 16, 1999, the date of the abandonment of the application, until the date that the applicant was first informed of the abandonment of the application by Brinks Hofer,[13] occurred despite *applicant's* diligence in prosecuting the application.[14]

The applicant has presented evidence showing that applicant instructed former counsel to pay the issue fee, and that former counsel apparently misled applicant into believing that the issue fee had been timely paid.[15] The applicant has also presented evidence that on or before January 25, 2003, more than four years after the due date for issue fee payment, which was the required reply to the outstanding Office action, applicant apparently communicated with Mr. Prendergast

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[10] See also *Ray v. Lehman*, 55 F.3d 606, 609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) ("Under . . . [35 U.S.C.] § 133, . . . the standard is unavoidable delay . . . in order to satisfy this standard, one must show that he exercised the due care of a reasonably prudent person").

[11] See, for example, "supplemental exhibit 1", which accompanied the April 1, 2010 supplement to the combined petition.

[12] See, for example, exhibit 9, the "Declaration of David S. Fleming in Support of Petition to Revive U.S. Patent Application No. 08/926,187", which accompanied the May 23, 2009 combined petition.

[13] As previously discussed, the applicant states that he was aware of the abandonment of the application on September 16, 2008, but has not provided evidence of when the applicant first became aware of the abandonment.

[14] Decisions on revival are made on a "case-by-case basis, taking of the all facts and circumstances into account". *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was unavoidable. See, e.g., *Haines v. Quigg*, 673 F. Supp. 314, 5 USPQ2d 1130 (N. D. Ind. 1987). See also MPEP 711.03(c), subsection II C 2.

[15] See exhibit 1 which accompanied the May 23, 2009 combined petition.

regarding the status of the present application.[16] The applicant states that the applicant "may have been aware that the application was abandoned on or before October 31, 2005".[17]

Evidence has not been presented, however, of when applicant first became aware of the abandonment of the application. Evidence has also not been presented of any inquiry by applicant regarding the status of the application, other than the above-discussed apparent inquiry on or before January 25, 2003, more than four years after the application became abandoned, and a possible second inquiry on or before October 31, 2005, more than six years after the application became abandoned.[18] In other words, the applicant has not presented evidence of any other inquiry, either by contacting applicant's former counsel, or by contacting the U.S. Patent and Trademark Office ("the Office"), during the *entire* time period between October 15, 1999, the due date for the reply to the outstanding Office action, and the date that applicant first learned of the abandonment, which, presumably, was September 16, 2008, nearly nine years after the due date for the reply.

For the reasons given above, the applicant has not submitted sufficient evidence showing:

1. the date that the applicant first became aware of the abandonment of the application,

2. how the delay between the date that the applicant first became aware of the abandonment of the application, and May 23, 2009, the filing date of present petition under 37 CFR 1.137(a), was unavoidable,

3. how the *entire* delay in discovering the abandonment of the application occurred despite the exercise, by the applicant, of due care and diligence in prosecuting the application, and

4. how the *entire* delay in filing the required reply from October 15, 1999, the due date for the reply, until the filing of a grantable petition was unavoidable, pursuant to 37 CFR 1.137(a)(3).[19]

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[16] See "supplemental exhibit 1" which accompanied the April 1, 2010 supplement to the combined petition.
[17] See page 2 of the April 1, 2010 supplement to the present petition. The applicant refers to an October 31, 2005 e-mail that was provided in exhibit 8, which accompanied the May 23, 2009 combined petition.
[18] The applicant presents evidence of an investigation into the status of this application from 2004 through early 2007 which was conducted by Brinks Hofer. See, particularly, paragraph no. 8 on page 2 of the declaration of David S. Fleming (exhibit 9 of the May 23, 2009 combined petition). This investigation presumably was initiated at some point by an inquiry from the applicant, but the applicant has not provided specific evidence of such an inquiry.
[19] The applicant cites *In re Lonardo*, 1990 Commr. Pat. LEXIS 18, 17 USPQ2d 1455 (Comm'r Pat. 1990), in which unavoidable delay was found where applicant's representative concealed the abandonment of the application from the applicant. In *Lonardo*, the diligence of both the applicant's representative, and of the applicant, was considered. "Proper considerations include the extent of diligence exhibited by the petitioner himself and by his attorney, in connection with the delay for which the application became abandoned and also with their respective efforts to revive the abandoned application." *Lonardo*, 17 USPQ2d at 1455. In *Lonardo*, however, the applicant provided evidence of when the applicant first learned of the abandoned status of the application, and also provided *specific* evidence of more than one inquiry by the applicant into the status of the application. See also *Huston v. Ladner*, 973 F.2d 1564, 23 USPQ2d 1910 (Fed. Cir. 1992), in which the court declined to hold that "attorney negligence" constituted good cause for excusing the failure to meet the Office requirement, expressly stating that the court was not bound by *Lonardo*.

Accordingly, the petition under 37 CFR 1.137(a), filed on May 23 2009, is **dismissed**.

The Petition under 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) a reply to the outstanding Office action, (2) the petition fee set forth in 37 CFR 1.17(m), and (3) a proper statement under 37 CFR 1.137(b)(3) that the entire delay in filing the required reply from the due date of the reply to the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.[20] The applicant has filed a payment of the issue fee and publication fee,[21] and a petition fee under 37 CFR 1.17(m), which satisfy items (1) and (2), respectively.

The applicant also states that "the entire delay in paying the required issue fee form the due date for the issue fee until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional",[22] which satisfies item (3).

This application has been abandoned for an extended period of time. In accepting the 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 Office is relying on the duty of candor and good faith of the applicant and of applicant's representative. See also 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and *Changes to Patent Practice and Procedure,* 62 Fed. Reg. 53131, 53160, 53178; 1203 *Off. Gaz. Pat. Office* 63, 88, 103 (responses to comment nos. 64 and 109) (October 21, 1997) (final rule) (applicant's representative is obligated under [former] 37 CFR 10.18(b) [now 37 CFR 11.18(b)] to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b)(3) to the Office). The signatures appearing on the May 23, 2009 combined petition and on the April 1, 2010 supplement to the combined petition constitute a representation to the Office that the signing attorney has made an inquiry in accordance with 37 CFR 11.18(b), to ascertain that the delay was unintentional.

Accordingly, based on the certification under 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and on the specific facts and circumstances of this application, the petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**.

The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

CONCLUSION

- The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on May 23, 2009, is **dismissed**.

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[20]Regarding 37 CFR 1.137(b)(4), no terminal disclaimer is required pursuant to 37 CFR 1.137(d), because the present application was filed after June 5, 1995.

[21] See MPEP 711.03(c), subsection II A 1 and the April 1, 2010 issue fee payment.

[22] See page 7 of the May 23, 2009 combined petition.

- The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**.

- The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

- This application is being forwarded to the Office of Publications for processing of the issue fee and publication fee filed on April 1, 2010.

- Any inquiry concerning this decision should be directed to Cynthia L. Nessler, Senior Legal Advisor, at (571) 272-7724.

Brian E. Hanlon
Director
Office of Patent Legal Administration

OIPE
MAY 23 2009
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#24 cont'd

Applicant: David A. Connolly

Title: WIRELESS DIGITAL PERSONAL COMMUNICATIONS SYSTEM HAVING VOICE/DATA/IMAGE TWO-WAY CALLING AND INTERCELL HAND-OFF PROVIDED THROUGH DISTRIBUTED LOGIC RESIDENT IN PORTABLE HANDSET TERMINALS, FIXED TERMINALS, RADIO CELL BASE STATIONS AND SWITCHED TELEPHONE NETWORK

App. No.:	08/926,187	Filed:	Sept. 8, 1997
Examiner:	Trost, William G.	Group Art Unit:	2744
Customer No.:	60533	Confirmation No.:	unknown

Atty. Dkt. No.: A00215 Con 2

RECEIVED
JUN 02 2009
OFFICE OF PETITIONS

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

PETITION TO REVIVE ABANDONED APPLICATION

Dear Sir:

This petition, submitted pursuant to 37 C.F.R. §1.137(a), or in the alternative, pursuant to 37 C.F.R. §1.137(b), is in response to a Notice of Abandonment mailed on May 24, 2000 regarding the above-identified application.

BACKGROUND

The Office mailed a Notice of Allowability and a Notice of Allowance and Issue Fee Due on July 15, 1999. The Notice of Allowability indicated that claims 1-27 of the application were allowed. The Notice of Allowance and Issue Fee Due indicated that the fees due totaled $1210.00. On May 24, 2000, the Notice of Abandonment was mailed indicating that the issue fee had not been received.

04/19/2010 LDIEP1 00000001 502469 08926187
01 FC:1501 1510.00 DA
02 FC:1501 1510.00 DA
03 FC:1504 300.00 DA

The Assignee directed Mr. William Prendergast, the Assignee's representative at the time, to pay the Issue Fee. In response, Mr. Prendergast provided apparently fraudulent information to the Assignee indicating that the Issue Fee had been paid. For example, EXHIBIT 1 is a letter from Mr.

05/27/2009 NNGUYEN1 00000015 502469 08926187
01 FC:1452 540.00 DA

in the investigation of Mr. Prendergast's activities with respect to this Application as well as others. *See, EXHIBIT 9*, at item 1 and 2.

Based on the above recited facts and arguments, Applicant submits that the entire delay in paying the issue fee from the due date of the issue fee until the filing of a grantable petition pursuant to 37 CFR §1.137(a) was unavoidable. The evidence presented herein demonstrates that the Application was unavoidably abandoned. Additionally, the evidence demonstrates that the Applicant has been diligent since becoming aware that the Application was abandoned and has used due care and diligence to petition the Office to revive the Application. Accordingly, Applicant hereby requests that the Application be revived as unavoidably abandoned.

UNINTENTIONAL DELAY

The Commissioner is authorized, by 35 U.S.C. §41(a)(7), to revive an abandoned patent application as unintentionally abandoned for the unintentionally delayed payment of a fee for issuing the patent. Applicant submits that the entire delay in paying the required issue fee from the due date for the issue fee until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional.

The evidence presented above demonstrates that the Application was abandoned unintentionally. For example, the Applicant specifically instructed Mr. Prendergast, and through him, the law firm of Brinks Hofer Gilson and Lione to pay the issue fee. *See*, *EXHIBIT 1* (acknowledging receipt of instructions to pay the issue fee). Additionally, Applicant has been diligent since becoming aware that the Application was abandoned and has used due care and diligence to petition the Office to revive the Application. Accordingly, Applicant hereby requests that the Application be revived as unintentionally abandoned.

CONCLUSION

Applicant respectfully requests revival of the Application under 37 CFR §1.137(a) as unavoidably abandoned. In the alternative, if the request for revival of the Application under 37 C.F.R. §1.137(a) is denied, Applicant respectfully requests revival of the Application pursuant to 37 CFR §1.137(b) as unintentionally abandoned.

If a call would in any way facilitate revival of this Application, the Office is invited to contact the current Attorney of Record.

Applicant does not believe that any additional fees are due, but if the Commissioner believes additional fees are due, the Commissioner is hereby authorized to charge any fees, which may be required, or credit any overpayment, to Deposit Account Number 50-2469.

Respectfully submitted,

5-22-2009
Date

Jeffrey G. Toler, Reg. No. 38,342
Attorney for Applicant
TOLER LAW GROUP
8500 Bluffstone Cove, Suite A201
Austin, Texas 78759
(512) 327-5515(phone)
(512) 327-5575 (fax)

#27

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Mail Stop ISSUE FEE
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
or Fax (571) 273-2885

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

84326

AT&T LEGAL DEPARTMENT - Toler
ATTN: PATENT DOCKETING
ROOM 2A-207
ONE AT&T WAY
BEDMINISTER, NJ 07921

RECEIVED
APR 01 2010
OFFICE OF PETITIONS

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission
I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

Grace Adame	(Depositor's name)
Grace Adame	(Signature)
April 1, 2010	(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/926,187	09/08/1997	David A. Connolly	A00215 Con 2	

TITLE OF INVENTION:
WIRELESS DIGITAL PERSONAL COMMUNICATIONS SYSTEM HAVING VOICE/DATA/IMAGE TWO-WAY CALLING AND INTERCELL HAND-OFF PROVIDED THROUGH DISTRIBUTED LOGIC RESIDENT IN PORTABLE HANDSET TERMINALS, FIXED TERMINALS, RADIO CELL BASE STATIONS AND SWITCHED TELEPHONE NETWORK

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	$1510	$300	$1810	10/15/99

EXAMINER	ART UNIT	CLASS-SUBCLASS
TROST, William G.	2744	

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).
☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list
(1) the names of up to 3 registered patent attorneys or agents OR, alternatively,
(2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.
1 Toler Law Group
2
3

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE
SBC Properties, L.P.

(B) RESIDENCE: (CITY and STATE OR COUNTRY)
Reno, NV

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☑ Corporation or other private group entity ☐ Government

4a. The following fee(s) are enclosed:
☑ Issue Fee
☑ Publication Fee (No small entity discount permitted)
☑ Advance Order - # of Copies 1

4b. Payment of Fee(s):
☐ A check in the amount of the fee(s) is enclosed.
☐ Payment by credit card. Form PTO-2038 is attached.
☑ The Director is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number 50-2469

5. Change in Entity Status (from status indicated above)
☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27. ☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

The Director of the USPTO is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.
NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature
Date Apr. 1, 2010
Typed or printed name Jason L. Moore
Registration No. 52,046

This collection of information is required by 37 CFR 1.311. 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, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.
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www.uspto.gov

AT&T Legal Department – Toler
Attn.: Patent Docketing
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

MAILED

APR 16 2010

In re Application of
David A. Connolly et al
Application No. 08/926,187
Filed: September 9, 1997

: **DECISION OFFICE OF PETITIONS**
: **ON**
: **PETITION**
:

This is a decision on the combined petition filed on May 23, 2009 ("the May 23, 2009 combined petition"), which includes:

- a petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, and
- an alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application.

This decision also addresses the paper filed on April 1, 2010 entitled "Supplement to Petition to Revive Abandoned Application" ("the April 1, 2010 supplement to the combined petition"), the completed form PTOL-85 entitled "Part B – Fee(s) Transmittal" filed on April 1, 2010 ("the April 1, 2010 issue fee payment"), as well as the statement under 3.73(b) filed on May 23, 2009, and power of attorney and change of correspondence address, also filed on May 23, 2009.

The combined petition filed on May 23, 2009, the April 1, 2010 supplement to the combined petition, the April 1, 2010 issue fee payment, the May 23, 2009 statement under 3.73(b), the May 23, 2009 power of attorney and change of correspondence address, and the record as a whole, are before the Office of Patent Legal Administration for consideration.

The $540 petition fee set forth in 37 CFR 1.17(l) for the present petition under 37 CFR 1.137(a), and the petition fee of $1620 set forth in 37 CFR 1.17(m) for the present petition under 37 CFR 1.137(b), will be charged to deposit account no. 50-2469 as authorized on the May 23, 2009 fees transmittal form, on page 8 of the May 23, 2009 combined petition, and on page 4 of the April 1, 2010 supplement to the combined petition. The $1510 issue fee and the $300 publication fee will also be charged to deposit account no. 50-2469, as authorized by the completed form PTOL -85, entitled "Part B – Fee(s) Transmittal", filed on April 1, 2010.

SUMMARY

The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on May 23, 2009, is **dismissed**. The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**. The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

DECISION

The Petition under 37 CFR 1.137(a) to Revive an Unavoidably Abandoned Application

On July 15, 1999, a notice of allowance and issue fee due was mailed by the Office, setting a three-month statutory period for reply. On May 24, 2000, a notice of abandonment was mailed by the Office, stating that the application was abandoned in view of "[a]pplicant'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". The present application was abandoned as of October 16, 1999. The present petition under 37 CFR 1.137(a), however, was not filed until May 23, 2009, nearly ten years later.

In evaluating a petition under 37 CFR 1.137, three periods are considered:[1]

(1) the delay in the reply that originally resulted in the abandonment,
(2) the delay in filing an initial petition under 37 CFR 1.137 to revive the application, and
(3) the delay in filing a *grantable* petition under 37 CFR 1.137 to revive the application.

Regarding period (1), the applicant has provided evidence to show that the delay in the reply that originally resulted in the abandonment of the application may have been unavoidable. Period (3) is not applicable, because the present petition is the initial petition filed under 37 CFR 1.137.[2] Regarding period (2), however, the present petition lacks sufficient evidence to show that the delay in filing the initial petition under 37 CFR 1.137(a) was unavoidable.

The applicant states that the applicant "was aware that the application was abandoned on or about September 16, 2008."[3] However, the applicant has not provided any evidence that the applicant was first notified of the abandonment of the application on this date.[4] Even assuming that the applicant was first notified of the abandonment of the application on September 16, 2008, however, the present petition under 37 CFR 1.137(a) was not filed by the applicant until May 23, 2009, more than eight months later.

MPEP 711.03(C), subsection II D, provides, in pertinent part:

> Where a petition pursuant to 37 CFR 1.137(a) . . . is not filed within 3 months of the date the applicant is first notified that the application is abandoned . . . the Office will require a showing as to how the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(a) petition was filed was "unavoidable".

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[1] See MPEP 711.03(c), subsection II D.

[2] For example, if a timely filed petition under 37 CFR 1.137 were dismissed on other grounds, applicant cannot intentionally delay the filing of a renewed petition Applicant must provide a showing that any delay in a renewed, and grantable, petition is either unavoidable (for petitions under 37 CFR 1.137(a)) or unintentional (for petitions under 37 CFR 1.137(b)). See *In re Application of Takao*, 1990 Comm'r Pat. LEXIS 6, 17 USPQ2d 1155 (Comm'r Pat. 1990).

[3] See page 2 of the April 1, 2010 supplement to the combined petition.

[4] While the applicant refers to a September 16, 2008 letter from the law firm of Brinks, Hofer, Gilson, and Lione ("Brinks Hofer"), applicant's former counsel, to the in-house attorney for the applicant, a copy of the letter has not been provided with the present petition.

The applicant has presented evidence that Mr. Prendergast, a former attorney of record, may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer Gilson and Lione ("Brinks Hofer") and from the applicant. The applicant also states that the delay in filing the present petition was due to the time required for Brinks Hofer to complete their internal investigation and provide the results to the applicant, the time required to determine which documents available in the records were falsified and which documents "were true", and the time required for applicant's current representative to review the file and the results of the investigation by Brinks Hofer.[5]

The evidence and statements presented by the applicant may show how the eight-month delay between September 16, 2008, the date that applicant states that he was aware of the abandonment,[6] and May 23, 2009, the filing date of the present petition, was unintentional. However, the applicant has not clearly shown how the *entire* eight-month delay was *unavoidable*. For example, the applicant has not provided evidence of when the applicant was first notified of the abandonment of the application. As another example, the applicant has not provided evidence showing the stage of the investigation on December 16, 2008, i.e., what had been accomplished as of December 16, 2008, three months after the applicant may have been first notified of the abandonment, and why a delay of an additional five months in order to file the present petition was unavoidable.

In addition, a grantable petition under 37 CFR 1.137(a) must be accompanied by (1) a reply to the outstanding Office action, (2) the petition fee set forth in 37 CFR 1.17(l), (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable,[7] and (4) any terminal disclaimer (and fee) required by 37 CFR 1.137(d).

The applicant has submitted, with the present petition filed on May 23, 2009, a payment of the issue fee and publication fee,[8] and a petition fee under 37 CFR 37 CFR 1.17(l), which satisfy items (1) and (2), respectively. Regarding item (4), no terminal disclaimer is required pursuant to 37 CFR 1.137(d), because the present application was filed after June 5, 1995. The applicant has not, however, satisfied item (3), because the applicant has not shown that the *entire* delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable.

Furthermore, where, as here, a petition under 37 CFR 1.137(a) is filed more than one year after the date of the abandonment of the application,[9] the applicant must also provide (see MPEP 711.03(c), subsection II D):

A. further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application; and

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[5] See page 3 of the April 1, 2010 supplement to the combined petition.
[6] Assuming, again, that the applicant was first notified of the abandonment of the application on that date.
[7] See 35 U.S.C. 133.
[8] See MPEP 711.03(c), subsection II A 1 and the April 1, 2010 issue fee payment.
[9] March 22, 2007.

B. a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative).

As stated above, the applicant has provided further information as to when the applicant became aware of the abandonment of the application, but has not provided information as to when the applicant *first* became aware of the abandonment of the application. In addition, the applicant has not provided a sufficient showing as to how the *entire* delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In determining if the delay was unavoidable, courts have adopted the standard of due care of a reasonably prudent person:

> 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. *In re Mattullath* , 38 App. D.C. 497, 514-15 (1912), quoting and adopting *Ex Parte Pratt*, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).[10]

The applicant provides evidence that Mr. Prendergast may have intentionally misled the applicant regarding the status of the application, [11] and that Mr. Prendergast may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer.[12] The applicant has not, however, provided sufficient evidence that the *entire* delay in discovering the abandoned status of the application, from October 16, 1999, the date of the abandonment of the application, until the date that the applicant was first informed of the abandonment of the application by Brinks Hofer,[13] occurred despite *applicant's* diligence in prosecuting the application.[14]

The applicant has presented evidence showing that applicant instructed former counsel to pay the issue fee, and that former counsel apparently misled applicant into believing that the issue fee had been timely paid.[15] The applicant has also presented evidence that on or before January 25, 2003, more than four years after the due date for issue fee payment, which was the required reply to the outstanding Office action, applicant apparently communicated with Mr. Prendergast

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[10] See also *Ray v. Lehman*, 55 F.3d 606, 609, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) ("Under . . . [35 U.S.C.] § 133, . . . the standard is unavoidable delay . . . in order to satisfy this standard, one must show that he exercised the due care of a reasonably prudent person").

[11] See, for example, "supplemental exhibit 1", which accompanied the April 1, 2010 supplement to the combined petition.

[12] See, for example, exhibit 9, the "Declaration of David S. Fleming in Support of Petition to Revive U.S. Patent Application No. 08/926,187", which accompanied the May 23, 2009 combined petition.

[13] As previously discussed, the applicant states that he was aware of the abandonment of the application on September 16, 2008, but has not provided evidence of when the applicant first became aware of the abandonment.

[14] Decisions on revival are made on a "case-by-case basis, taking of the all facts and circumstances into account". *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was unavoidable. See, e.g., *Haines v. Quigg*, 673 F. Supp. 314, 5 USPQ2d 1130 (N. D. Ind. 1987). See also MPEP 711.03(c), subsection II C 2.

[15] See exhibit 1 which accompanied the May 23, 2009 combined petition.

regarding the status of the present application.[16] The applicant states that the applicant "may have been aware that the application was abandoned on or before October 31, 2005".[17]

Evidence has not been presented, however, of when applicant first became aware of the abandonment of the application. Evidence has also not been presented of any inquiry by applicant regarding the status of the application, other than the above-discussed apparent inquiry on or before January 25, 2003, more than four years after the application became abandoned, and a possible second inquiry on or before October 31, 2005, more than six years after the application became abandoned.[18] In other words, the applicant has not presented evidence of any other inquiry, either by contacting applicant's former counsel, or by contacting the U.S. Patent and Trademark Office ("the Office"), during the *entire* time period between October 15, 1999, the due date for the reply to the outstanding Office action, and the date that applicant first learned of the abandonment, which, presumably, was September 16, 2008, nearly nine years after the due date for the reply.

For the reasons given above, the applicant has not submitted sufficient evidence showing:

1. the date that the applicant first became aware of the abandonment of the application,

2. how the delay between the date that the applicant first became aware of the abandonment of the application, and May 23, 2009, the filing date of present petition under 37 CFR 1.137(a), was unavoidable,

3. how the *entire* delay in discovering the abandonment of the application occurred despite the exercise, by the applicant, of due care and diligence in prosecuting the application, and

4. how the *entire* delay in filing the required reply from October 15, 1999, the due date for the reply, until the filing of a grantable petition was unavoidable, pursuant to 37 CFR 1.137(a)(3).[19]

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[16] See "supplemental exhibit 1" which accompanied the April 1, 2010 supplement to the combined petition.

[17] See page 2 of the April 1, 2010 supplement to the present petition. The applicant refers to an October 31, 2005 e-mail that was provided in exhibit 8, which accompanied the May 23, 2009 combined petition.

[18] The applicant presents evidence of an investigation into the status of this application from 2004 through early 2007 which was conducted by Brinks Hofer. See, particularly, paragraph no. 8 on page 2 of the declaration of David S. Fleming (exhibit 9 of the May 23, 2009 combined petition). This investigation presumably was initiated at some point by an inquiry from the applicant, but the applicant has not provided specific evidence of such an inquiry.

[19] The applicant cites *In re Lonardo*, 1990 Commr. Pat. LEXIS 18, 17 USPQ2d 1455 (Comm'r Pat. 1990), in which unavoidable delay was found where applicant's representative concealed the abandonment of the application from the applicant. In *Lonardo*, the diligence of both the applicant's representative, and of the applicant, was considered. "Proper considerations include the extent of diligence exhibited by the petitioner himself and by his attorney, in connection with the delay for which the application became abandoned and also with their respective efforts to revive the abandoned application." *Lonardo*, 17 USPQ2d at 1455. In *Lonardo*, however, the applicant provided evidence of when the applicant first learned of the abandoned status of the application, and also provided *specific* evidence of more than one inquiry by the applicant into the status of the application. See also *Huston v. Ladner,* 973 F.2d 1564, 23 USPQ2d 1910 (Fed. Cir. 1992), in which the court declined to hold that "attorney negligence" constituted good cause for excusing the failure to meet the Office requirement, expressly stating that the court was not bound by *Lonardo*.

Accordingly, the petition under 37 CFR 1.137(a), filed on May 23 2009, is **dismissed**.

The Petition under 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) a reply to the outstanding Office action, (2) the petition fee set forth in 37 CFR 1.17(m), and (3) a proper statement under 37 CFR 1.137(b)(3) that the entire delay in filing the required reply from the due date of the reply to the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.[20] The applicant has filed a payment of the issue fee and publication fee,[21] and a petition fee under 37 CFR 1.17(m), which satisfy items (1) and (2), respectively.

The applicant also states that "the entire delay in paying the required issue fee form the due date for the issue fee until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional",[22] which satisfies item (3).

This application has been abandoned for an extended period of time. In accepting the 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 Office is relying on the duty of candor and good faith of the applicant and of applicant's representative. See also 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and *Changes to Patent Practice and Procedure,* 62 Fed. Reg. 53131, 53160, 53178; 1203 *Off. Gaz. Pat. Office* 63, 88, 103 (responses to comment nos. 64 and 109) (October 21, 1997) (final rule) (applicant's representative is obligated under [former] 37 CFR 10.18(b) [now 37 CFR 11.18(b)] to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b)(3) to the Office). The signatures appearing on the May 23, 2009 combined petition and on the April 1, 2010 supplement to the combined petition constitute a representation to the Office that the signing attorney has made an inquiry in accordance with 37 CFR 11.18(b), to ascertain that the delay was unintentional.

Accordingly, based on the certification under 37 CFR 1.4(d)(4), which incorporates 37 CFR 11.18(b), and on the specific facts and circumstances of this application, the petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**.

The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

CONCLUSION

- The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on May 23, 2009, is **dismissed**.

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[20]Regarding 37 CFR 1.137(b)(4), no terminal disclaimer is required pursuant to 37 CFR 1.137(d), because the present application was filed after June 5, 1995.

[21] See MPEP 711.03(c), subsection II A 1 and the April 1, 2010 issue fee payment.

[22] See page 7 of the May 23, 2009 combined petition.

- The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on May 23, 2009, is **granted**.

- The May 23, 2009 statement under 3.73(b), and the May 23, 2009 power of attorney and change of correspondence address, are **effective**.

- This application is being forwarded to the Office of Publications for processing of the issue fee and publication fee filed on April 1, 2010.

- Any inquiry concerning this decision should be directed to Cynthia L. Nessler, Senior Legal Advisor, at (571) 272-7724.

Brian E. Hanlon
Director
Office of Patent Legal Administration

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 27

KNOBBE, MARTENS, OLSON
& BEAR, LLP
620 Newport Center Drive
Sixteenth Floor
Newport Beach, CA 92660

MAILED

JUL 24 2001

OFFICE OF DIRECTOR
GROUP

In re Application of: :
Vachris, et al. :
Application No. 08/926,277 : DECISION ON REQUEST TO
Filed: September 05, 1997 : WITHDRAW FROM RECORD
Attorney Docket No. WHOVIS.023A :

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed June 26, 2001.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) 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 that can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above requirements. The request was signed by John R. King on behalf of all the attorneys of record in the above identified application and there is no outstanding Office action requiring a response by the applicant.

The request is approved.

The application currently has no attorney of record.

All future communications from the Office will be directed to John Eldredge, Esq. at the firm of Stradling, Yocca, Carlson & Rauth at the below-listed address until otherwise notified by applicant.

Inquiries related to this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: John Eldredge, Esq.
Stradling, Yocca, Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660

EJG:lmm

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 37

John Eldredge
STRADLING, YOCCA, CARLSON & RAUTH
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660

MAILED

MAY 9 2003

OFFICE OF DIRECTOR
GROUP

In re Application of)
Paul F. Vachris et al.)
Application No. 08/926,277)
Filed: September 5, 1997)
For: RELIEF OBJECT IMAGE)
GENERATOR)

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed December 31, 2002.

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

The request was signed by John W. Eldredge on behalf of himself and all attorneys of record associated with Customer No. 31278. Currently, there is no response required from the applicant.

The request is APPROVED.

Applicants are reminded that there is no attorney of record at this time. The correspondence address of record has been changed and the new correspondence address appears below.

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

Hien H. Phan, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Howard Kline
SECURITY FIRST CORPORATION
22362 Gilberto, Suite 130
Rancho Santa Margarita, CA 92688

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. 5791655
Issue Date: August 11,1998
Application No. 08926292
Filed: September 5,1997
Attorney Docket No.

:
: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 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 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.

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)
5,791,655	1998-08-11	08/926,292	1997-09-05	M-77-DIV-CON

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	/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.**

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.

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)
6087654	2000-07-11	08926768	1997-09-08	P/4648-6 (V9212)

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)	2008-09-05
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 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. 6087654
Issue Date: July 11,2000
Application No. 08926768
Filed: September 8,1997
Attorney Docket No. 260.011PA

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

This is a decision on the electronic petition, filed September 5,2008 ,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 September 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.

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Hershkovitz & Associates, LLC
2845 Duke Street
Alexandria VA 22314

Paper No. 18

In re Patent No. 6,141,658
Issue Date: October 31, 2000
Application No. 08/926,870
Filed: September 10, 1997
Attorney Docket No. P65330

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed May 13, 2008, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **GRANTED**.

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

Telephone inquiries concerning this decision may be directed to Carl Friedman at (571) 272-6842. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to Krystal Paige in the Publishing Division at (703) 308-9250, Ext. 139.

A copy of this decision is being faxed to Publishing Division for issuance of a duplicate Letters Patent.

David Bucei
Petitions Examiner
Office of Petitions

cc: Krystal Paige, South Tower, 8th Floor, Room C32 (Fax No. (571) 270-9937)

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. 5901395
Issue Date: May 11,1999
Application No. 08927074
Filed: September 11,1997
Attorney Docket No. VAN3022.02A

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

This is a decision on the electronic petition, filed September 24,2007,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 September 24,2007. 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)
5901395	1999-05-11	08927074	1997-09-11	VAN3022.02A

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	/Timothy Vander Heiden/	Date (YYYY-MM-DD)	2007-09-11
Name	Timothy Vander Heiden		

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 PATENT
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ALEXANDRIA, VA 22313-1450
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Paper No. 25

Fuess and Davidenas
10951 Sorrento Valley Road
Sutie 11-G
San Diego, CA 92121

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MAY 15 2003

OFFICE OF PETITIONS

In re application of
Frederick Fish
Application No. 08/928,074
Filing Date: September 11, 1997
Attorney Docket No. 234001

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 9, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Non-Responsive Amendment filed December 4, 2001, which set a period for reply of (1) One Month or (30) Thirty Days from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 5, 2002.

Any questions concerning this matter may be directed to the undersigned at (703) 308-6911.

The application file is being forwarded to Technology Center AU 1647 for further processing.

Latrice Bond

Latrice Bond
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: William C. Fuess
17258 Amarillo Road
Ramona, CA 92065

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. 5984499
Issue Date: November 16,1999
Application No. 08928089
Filed: September 12,1997
Attorney Docket No. 7454-000005

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

This is a decision on the electronic petition, filed January 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 January 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 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)
5984499	1999-11-16	08928089	1997-09-12	HUR-P204

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	/Robert D. Null/	Date (YYYY-MM-DD)	2008-01-11
Name	Robert D. Null	Registration Number	40746

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

John C. Thomas, III
Paul A. Beck & Associates
1575 McFarland Road, Ste. 100
Pittsburgh, PA 15216-1808

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OCT 2 8 2005

OFFICE OF PETITIONS

In re Patent No. 6,119,887 :
Issue Date: September 19, 2000 :
Application No. 08/928,386 : ON PETITION
Filed: September 12, 1997 :
Patentee(s) David T. Palazzo :

This is a decision on the petition under 37 CFR 1.378(c), filed September 22, 2005, to accept the delayed payment of a maintenance fee for the above-identified patent.

It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. However, in accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts.

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.

If petitioner desires to receive future correspondence, which **may** be mailed, regarding maintenance fees for the above-identified patent, the attached "fee address" and/or "customer number" forms should be submitted.

The patented file is being forwarded to Files Repository.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Enclosures: Privacy Act Statement
Fee Address Indication Form (PTO/SB/47)
Request for Customer Number (PTO/SB/125)

cc: John W. Jacob
Highland Tank & Manufacturing Company
One Highland Road
Stoystown, PA 15563

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 16

Finnegan, Henderson, Farabow,
Garrett and Dunner
1300 I Street, N. W.
Washington, DC 20005-3315

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JUL 1 3 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Patent No. 6,024,708 :
Issue Date: February 15, 2000 :
Application No. 08/928,453 : ON PETITION
Filed: September 12, 1997 :
Attorney Docket No. 6530.0095-02 :

This is a decision on the petition under 37 CFR 1.182, filed April 17, 2000, requesting issuance of duplicate Letters Patent for the above-identified application.

The petition is granted.

The Publishing Division is directed to issue duplicate Letters Patent.

Any questions concerning this matter may be directed to the undersigned at (703) 306-3475.

A copy of this decision is being forwarded to the Publishing Division for issuance of a duplicate Letters Patent. The patent file is being forwarded to the Files Repository.

Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy 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

Paper No. 18

FINNEGAN HENDERSON FARABOW
GARRETT AND DUNNER
1300 I STREET NW
WASHINGTON, DC 20005-3315

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OCT 14 2004

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,024,708 :
Issue Date: February 15, 2000 :
Application No. 08/928,453 :
Filed: September 12, 1997 :
Patentee(s) Thomas O. Bales et al :

This is a decision on the petition under 37 CFR 1.378(c), filed April 26, 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 Irvin Dingle at (571) 272-3210.

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
Washington, D.C. 20231
www.uspto.gov

Paper No. 17

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SEP 27 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

ON PETITION

DONALD R. BOYS
P.O. BOX 187
AROMAS, CA 95004

In re Application of
Neyman, et al.
Application No. 08/928,861
Filed: September 12, 1997
Attorney Docket No. P3251

This is a decision on the petition under 37 CFR 1.182, filed August 17, 2000, to correct the spelling of the names of the second and seventh named inventors.

The petition is **GRANTED**.

The name of the second inventor will be changed from "MICHAIL BARSKIY" to - - **MYHAILO BARSKYY** - - .

The name of the seventh inventor will be changed from "PAUL KARPENKO" to - - **PAVEL KARPENKO** - - .

The Office records have been corrected to reflect the correction of the spelling of the names of the second and seventh named inventors as noted above.

This file is being forwarded to Technology Center 2700 for further processing of the application.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-5589.

Christina T. Tartera

Christina T. Tartera
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

ROBERT D. TOUSLEE
JOHNS MANVILLECORPORATION
10100 WEST UTE AVENUE
LITTLETON, CO 80127

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APR 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Arterburn, Russell Donovan :
Application No. 08/929,836 : ON PETITION
Filed: September 15, 1997 :
Attorney Docket No. 6971 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 1, 2005, 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 26, 2004, and no extensions of time under the provisions of 37 CFR 1.136(b) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on September 27, 2004. See MPEP 1215.04.

An additional $500.00 will be charged to petitioner's deposit account, as authorized, for the appeal brief fee.

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

This matter is being referred to Technology Center 1700 for further processing.

Telephone inquiries regarding 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

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. 14

CARL M. NAPOLITANO
255 SOUTH ORANGE AVE., SUITE 1401
P.O. BOX 3791
ORLANDO, FL 32802

In re Patent No. 6,032,859
Issue Date: March 7, 2000
Application No. 08/929,993
Filed: September 15, 1997
Patentee: Karl Muehlberger, et al.

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed December 23, 2004, to accept the unintentionally delayed payment of the 4 year 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 the undersigned at (571) 272-3229.

Retta Williams

Retta Williams
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

Orum & Roth LLC
53 W. Jackson Blvd., Ste 1616
Chicago IL 50604

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DEC 07 2009

OFFICE OF PETITIONS

In re Application of :
Karl Muehlberger :
Application No. 08/929,993 :
Filed: September 15, 1997 :
Attorney Docket No. **2573** :

NOTICE

This is a notice regarding your request filed October 1, 2009, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

There is no indication that the person signing the petition/request was ever given a power of attorney to prosecute the application. However, in accordance with 37 CFR 1.34, the signature of Mark C. Young appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Mark C. Young desires to be acknowledged as the attorney of record the appropriate power of attorney document must be submitted.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: Mark C. Young
STINSON MORRISON HECKER LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106-2150

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. 20

Pillsbury Madison & Sutro LLP
1100 New York Avenue, N.W.
Ninth Floor
Washington, D.C. 20005-3918

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JUL 31 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Thierry Wetzel, et al. :
Application No. 08/930,702 : ON PETITION
Filed: February 13, 1998 :
Attorney Docket No. CPW50075/US :

This is a decision on the petition under 37 CFR 1.137(b), filed June 13, 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.

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

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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.

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).

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 February 16, 2000. 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.

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 Retta Williams at (703) 306-5594 or in my absence, Marianne Morgan at (703) 306-3475.

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne Morgan
Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 20

Pillsbury Madison & Sutro LLP
1100 New York Avenue, N.W.
Ninth Floor
Washington, D.C. 20005-3918

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AUG 2 1 2001

OFFICE OF PETITIONS

In re Application of :
Thierry Wetzel, et al. :
Application No. 08/930,702 : ON PETITION
Filed: February 13, 1998 :
Attorney Docket No. CPW50075/US :

CORRECTED DECISION

This is a corrected decision on the petition under 37 CFR 1.137(b), filed June 13, 2001, to revive the above-identified application.

The petition is **GRANTED**.

The decision mailed July 31, 2001 is hereby vacated for the reason stated below.

The previous decision stated that 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 February 16, 2000. Accordingly, the petition was dismissed. However, a review of the file record discloses that the action was, in fact, not a final office action but a non-final action. In view thereof, the reply submitted with the instant petition is considered a proper reply.[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. 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.

---

[1] Petitioner should note that although the reply is considered a proper reply to revive the application, it should not be inferred that the reply has been accepted by the examiner.

Telephone inquiries concerning this decision should be directed to Retta Williams at (703) 306-5594 or in my absence, Marianne Morgan at (703) 306-3475.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne Morgan

Marianne Morgan
Petitions Examiner

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Paper No. 30

PILLSBURY WINTHROP, LLP
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MCLEAN, VA 22102

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APR 2 8 2004

OFFICE OF PETITIONS

In re Application of :
Thierry Wetzel, et al :
Application No. 08/930,702 : ON PETITION
Filed: February 13, 1998 :
Attorney Docket No. CPW50075/US :

This is a decision on the petition under 37 CFR 1.137(b) filed April 15, 2004, to revive the above-identified application.

The application became abandoned for failure to timely reply to the final Office action mailed January 4, 2002. A Notice of Abandonment was mailed August 27, 2002. Receipt is acknowledged of the Notice of Appeal filed April 20, 2004.

The petition is GRANTED. The 2-month period for filing the Appeal Brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

Extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. Accordingly, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response expired. Therefore, no extension fees are due on a petition for revival. In view thereof, the $950 extension of time fee submitted with the petition is unnecessary and will be credited to counsel's deposit account as authorized.

This application is being forwarded to Technology Center AU 1615.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-9282.

Sherry D. Brinkley

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

02 JUL 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Laurence A. Greenberg
LERNER AND GREENBERG, P.A.
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Hollywood, FL 33022-2480

In re Application of :
SEMSCH, Angelika *et al* :
U.S. Application No.: 08/930,735 :
PCT No.: PCT/DE97/00187 :
Int. Filing Date: 26 January 1997 : **DECISION**
Priority Date: 27 January 1996 :
Attorney Docket No.: 0190 US/P :
For: DEVICE FOR PREVENTING OR :
REDUCING TIPPING OF THE HEAD :

This decision is in response to applicants' "Request to Rescind Notification of Abandonment and Reinstatement of Application" filed on 01 December 1998 and "Request for Decision on Applicants' Request for Rescinding the Notice of Abandonment" filed on 07 June 2002 which are treated as a petition under 37 CFR 1.10(c) and a request to withdraw holding of abandonment. No fee is required.

BACKGROUND

On 23 November 1998, a communication was mailed notifying applicants that the above-captioned application was abandoned for failure to enter the national stage by the expiration of 20 months from the earliest claimed priority date. The national stage papers were deemed received on 30 September 1997. The communication also noted that even if the above-identified application were considered to be timely filed, the papers did not include a small entity statement or authorization to charge additional fees. Therefore, the application would be held abandoned because the basic national fee for a small entity was paid.

On 01 December 1998, applicants filed a "Request to Rescind Notification of Abandonment and Reinstatement of Application" along with a copy of Express Mail label No. EM405382687US and the date stamped postcard receipt for the national stage papers via facsimile.

On 11 December 2000, applicants filed a "Status Letter."

On 07 June 2002, applicants filed via facsimile a "Request for Decision on Applicants' Request for Rescinding the Notice of Abandonment" which was accompanied by, *inter alia*, a copy of the "Request to Rescind Notification of Abandonment and Reinstatement of Application" filed on 01 December 1998.

DISCUSSION

Petition Under 37 CFR 1.10(c)

Any correspondence received by the Patent and Trademark Office delivered by "Express Mail" will be considered filed in the office on the date of deposit with the USPS. 37 CFR 1.10(a). Moreover, 37 CFR 1.10(c) states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date - in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date - in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> > (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
> >
> > (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
> >
> > (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date - in," and of any other official notation by the USPS relied upon to show the date of deposit.

In the petition filed 01 December 1998, applicants submitted a copy of Express Mail label No. EM405382687US which has a "Date In" listed as "9 29 97" and a date stamp of "SEP 29 1997" located on its face. Moreover, a review of the above-captioned application reveals that the Express Mail label No. EM405382687US was listed on a document titled "Verified Certification of Express Mailing Date" filed with the national stage papers. This document verified that the national stage papers were filed with the USPS on "09/29/97." This petition is timely filed.

Applicants have met all the requirements of 37 CFR 1.10(c).

The date of receipt of the national stage papers is **29 September 1997**.

Request to Withdraw Holding of Abandonment

As previously stated in the communication mailed 23 November 1998, the national stage papers filed 29 September 1997 did not include a small entity statement or authorization to charge additional fees to counsel's Deposit Account. Therefore, the application would be held abandoned even if it was timely filed.

In the request dated 01 December 1998, applicants argue that: (1) they relied on a statement contained in the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 10 December 1997 that the large entity fee would be charged to counsel's deposit account, and (2) counsel filed the required small entity statement within one month from receipt of the Form PCT/DO/EO/905 on 16 January 1998. Applicants therefore claim that the "application should be returned to regular pending status and the Notification of Abandonment should be rescinded."

These arguments have been considered and dismissed.

A review of the above-captioned application reveals that applicants submitted a check of $520.00 with the national stage papers. The proper basic national fee was for the above-captioned application was $910.00. The box next to the authorization to charge any additional fees to counsel's Deposit Account on the Form PTO-1390 was not checked even though the Deposit Account No. was listed.

Accordingly, the USPTO had no authority to charge the full basic national fee on 29 September 1997 to prevent the above-captioned national stage application from being abandoned. Therefore, the application became abandoned on 30 September 1997 for failure to pay the required basic national fee pursuant to 37 CFR 1.494(b)(2).

Since the above-identified application was already abandoned prior to the mailing of the Form PCT/DO/EO/905 on 10 December 1997, applicants could not have detrimentally relied on a statement that the large entity fee would be charged to counsel's deposit account. Moreover, the subsequent filing of a small entity statement does not affect the abandoned status of the application.

CONCLUSION

Applicants' petition pursuant to 37 CFR 1.10(c) is **GRANTED**. However, the request to withdraw the holding of abandonment is **DISMISSED** without prejudice.

The above-captioned remains **ABANDONED**.

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 "Renewed Petition to Withdraw Holding of Abandonment."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Boris Milef
PCT Legal Examiner
PCT Legal Office

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

23 AUG 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Laurence A. Greenberg
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In re Application of :
SEMSCH, Angelika *et al* :
U.S. Application No.: 08/930,735 :
PCT No.: PCT/DE97/00187 :
Int. Filing Date: 26 January 1997 : **DECISION**
Priority Date: 27 January 1996 :
Attorney Docket No.: 0190 US/P :
For: DEVICE FOR PREVENTING OR :
REDUCING TIPPING OF THE HEAD :

This decision is in response to applicants' "Renewed Petition to Withdraw Holding of Abandonment" filed on 17 July 2002. No fee is required.

BACKGROUND

On 02 July 2002, a decision granting applicants' petition under 37 CFR 1.10(c) and dismissing applicants' petition to withdraw the holding of abandonment was mailed. The application became abandoned on 30 September 1997 for failure to pay the required basic national fee pursuant to 37 CFR 1.494(b)(2).

On 17 July 2002, applicants filed via facsimile the instant renewed petition.

DISCUSSION

In the renewed petition, applicants argue that the decision dated 02 July 2002 dismissing applicants' request to withdraw the holding of abandonment is incorrect and that the holding of abandonment should be withdrawn. Specifically, applicants claim:

(1) 35 U.S.C. 371 allows the national fee to be paid at "such later time as may be fixed by the Commissioner." The Notification of Missing Requirements mailed 10 December 1997 set a new time limit and applicants met the time limit of this notice.

(2) Applicants relied detrimentally on the statement in the Notification of Missing Requirements mailed 10 December 1997 and missed his opportunity to cure.

(3) Counsel showed a clear intention to charge any required additional fees due in the above-captioned application by typing his Deposit Account number on the transmittal letter.

Moreover, counsel requests to reinstate the Notification of Missing Requirements mailed 10 December 1997 which was vacated by the decision dated 23 November 1998 because "it was vacated based on the incorrectly assigned filing date." Ren.Pet. at ¶ 13.

These arguments have all been considered *de novo* and again dismissed.

Concerning item (1), applicants submitted a check of $520.00 with the national stage papers on 29 September 1997. The proper basic national fee was for the above-captioned application was $910.00. 37 CFR 1.494 states, in part:

> (b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 20 months from the priority date:
>
> > (2) The basic national fee (see § 1.492(a)). **The 20-month time limit may not be extended.** (Emphasis added).

The Notification of Missing Requirements mailed 10 December 1997 had no effect on the status of the above-captioned application since it was already abandoned pursuant to 37 CFR 1.494(b)(2). The Notification of Missing Requirements did not set a new time limit to pay the required basic national fee allowed by 35 U.S.C. 371 since the application was abandoned prior to the mailing of the Notification by federal regulation.

With regard to item (2), applicants claim to have detrimentally relied upon the statement that the large entity fee would be charged to counsel's Deposit Account. Counsel claims that he could have filed a Bypass Continuation application under 35 U.S.C. 111(a) or as a national stage under 35 U.S.C. 371 along with a petition to revive under 37 CFR 1.137(b). Counsel claims that "it is solely through the action of the Office that counsel has been lulled into thinking that there was no problem until it was too late to take alternative action." Id. at ¶ 10.

Evidently, counsel believes that these are no longer viable options. This is incorrect. Counsel can pursue this application using a continuation application under 35 U.S.C. 111(a) or through a national stage case under 35 U.S.C. 371 by also filing a petition to revive pursuant to 37 CFR 1.137(b). The petition to revive for the continuation application would revive the international case for continuity only and then would be immediately abandoned. The petition to revive for the above-captioned case would also be appropriate since counsel has been actively pursuing a withdrawal of the holding of abandonment.

Regarding item (3), the box next to the authorization to charge any additional

fees to counsel's Deposit Account on the Form PTO-1390 was not checked even though the Deposit Account No. was listed. The USPTO has no authority to charge fees on a Deposit Account unless there is proper authorization in the application regardless of any alleged intention. Proper authorization is not granted unless the box is checked on the transmittal letter next to the statement that "[t]he Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 12-1099." *See* 37 CFR 1.25.

Finally, the decision dated 23 November 1998 also based the judgment on the fact that "the papers . . . did not include a Small Entity Statement or an authorization to charge additional fees, therefore, the application would be held abandoned even if it was timely filed." Accordingly, counsel is mistaken that the decision was solely based on the incorrectly assigned filing date which has been subsequently changed in the decision dated 02 July 2002. The filing of a small entity statement in an abandoned application has no effect on the lack of timely payment of the basic national fee.

DECISION

For the reasons above, applicants' renewed petition requesting that the holding of abandonment be withdrawn is again **DISMISSED** without prejudice.

Applicants should file a petition under 37 CFR 1.137(b) to revive the national stage application or file a new application under 35 U.S.C. 111(a) along with a petition to revive under 37 CFR 1.137(b). Failure to file such a petition will be construed as an intentional delay.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patent, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Affairs Division of the PCT Legal Office.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

07 APR 2003

#13

UNITED STATES PATENT AND TRADEMARK OFFICE

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Laurence A. Greenberg
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P.O. Box 2480
Hollywood, FL 33022-2480

In re Application of :
SEMSCH, Angelika *et al* :
U.S. Application No.: 08/930,735 :
PCT No.: PCT/DE97/00187 :
Int. Filing Date: 26 January 1997 : **DECISION**
Priority Date: 27 January 1996 :
Attorney Docket No.: 0190 US/P :
For: DEVICE FOR PREVENTING OR :
REDUCING TIPPING OF THE HEAD :

Applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b)" filed via facsimile on 19 September 2002 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that "the entire delay in filing the required reply from the due date until the filing of this petition, was unintentional" as required by 37 CFR 1.137(b)(3). The small entity petition fee of $640.00 has been charged from counsel's credit card as authorized. No terminal disclaimer is required. Accordingly, all requirements under 37 CFR 1.137(b) are now satisfied.

Applicants' petition under 37 C.F.R. 1.8(b) filed via facsimile on 13 March 2003 to show that the petition to revive was originally submitted 19 September 2002 is dismissed as moot since the instant petition to revive has been located and placed in the above-captioned application.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c). The application has an international filing date of 26 January 1997, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **19 September 2002**.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
PCT Legal Office

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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SEP 0 2 2005

OFFICE OF PETITIONS

In re Patent No. 6,860,563	:	
Application No. 08/930,735	:	
Filed: September 19, 2002	:	ON PETITION
Issued: March 1, 2005	:	
Attorney Docket No. 0190 US/P	:	

This is a decision on the petition filed May 19, 2005, which is being treated as a request under 37 CFR 3.81[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request under 37 CFR 3.81 is **GRANTED**.

As authorized in the instant petition, the requisite $130.00 fee for a request under 37 CFR 3.81 will be charged to petitioner's deposit account.

Telephone inquiries should be directed to Paralegal Liana Chase at (571) 272-3282. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Corrections Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] See Official Gazette of June 22, 2004

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. 6034064
Issue Date: March 7,2000
Application No. 08930741
Filed: January 8,1998
Attorney Docket No. 02481.1560

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

This is a decision on the electronic petition, filed December 12,2008 ,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 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.

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)
6,034,064	2000-03-07	08/930,741	1998-01-08	DEAV1995/S018 US PCT

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	/Raymond S. Parker, III,Ph.D./	Date (YYYY-MM-DD)	2008-11-25
Name	Raymond S. Parker, III, Ph.D.	Registration Number	34893

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.

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. 46

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MAILED

NOV 24 2003

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HAE-SEUNG LEE

Appeal No. 2003-0573
Application No. 08/931,125

HEARD: June 12, 2003

Before RUGGIERO, GROSS, and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests that we reconsider that portion of our decision of July 2, 2003 wherein we sustained the Examiner's 35 U.S.C. § 102(e) rejection of claims 1, 2, and 6 based on Jones.[1]

[1] Appellant also filed a Substitute Request for Rehearing solely directed to the correction of typographical and grammatical inaccuracies in the original Request for Rehearing.

In our original decision, we determined that the Examiner had established a prima facie case of anticipation which had not been persuasively rebutted by any convincing arguments from Appellant. In particular, we found to be unpersuasive Appellant's contention that Jones does not disclose a one-to-one caching arrangement in a RAID-5 disk system.

Appellant now asserts in this request that claim 1, the representative claim for Appellant's grouping including claims 1, 2, and 6, also requires a dedicated region for storing parity information. In making this assertion, Appellant points to language in claim 1 which recites memory devices ". . . having a first region for sequentially storing parity information" and the obtaining of parity information ". . . from said first region" of the memory devices. In Appellant's view (Request, pages 4 and 5), this language of claim 1 distinguishes over a RAID-5 system, such as discussed in Jones, in which parity data is distributed throughout the disk drives.

In reviewing the arguments in this Request, we make the observation that any arguments related to the requirement of a dedicated parity information storing region in appealed claim 1, and any asserted absence of such feature in Jones with respect to claim 1, were not made in the Briefs before us on appeal. An

argument not timely made is an argument waived. Since Appellant never raised this factual question with the Examiner, we do not have the benefit of the Examiner's position on this question of fact. A new argument advanced in such a manner has not afforded the Examiner an opportunity to respond to the new argument. It is a requirement of 37 CFR § 192 that Appellant submits arguments in the Brief(s) specifying all of the errors made by the Examiner in the rejection. See Ex Parte Hindersinn, 177 USPO 78, 80 (Bd. App. 1971).

It is further well settled that the failure on the part of an Appellant to present an argument before the board prior to a request for rehearing constitutes a waiver of such argument. See In re Kroekel, 803 F.2d 705, 709, USPQ 640, 642-43 (Fed. Cir. 1986). Consequently, we will not consider this new argument of fact as a basis for changing our prior decision in this case. We will offer the comment, however, that it does not appear that the claim language ". . . first region for sequentially storing parity information" requires a "dedicated" storage region as asserted by Appellant in this Request.

In conclusion, based on the foregoing, we have granted Appellant's request to the extent that we have reconsidered our

decision of July 2, 2003, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING/DENIED

JOSEPH F. RUGGIERO)
Administrative Patent Judge)
)
)
)
ANITA PELLMAN GROSS) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
)
)
)
HOWARD B. BLANKENSHIP)
Administrative Patent Judge)

JFR/lp

Appeal No. 2003-0573
Application No. 08/931,125

ROBERT E. BUSHNELL
1522 K STREET, N.W. SUITE 300
WASHINGTON, DC 20005-1202

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

COPY MAILED

JUN 29 2005

OFFICE OF PETITIONS

In re Application of :
Falo, et al. :
Application No. 08/931,219 : ON PETITION
Filed: September 16, 1997 :
Attorney Docket No. 125350-3 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 4, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the non-final Office action mailed July 16, 2003. Accordingly, this application became abandoned on October 17, 2003. A Notice of Abandonment was mailed on March 10, 2004.

The file is being forwarded to Technology Center 1600, for review of the response, filed May 4, 2005, *in due course.*

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3228.

Edward J. Tannouse
Petitions Attorney
Office of Petitions/Patent
United States Patent and Trademark Office

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. 6145068
Issue Date: November 7,2000
Application No. 08931330
Filed: September 16,1997
Attorney Docket No. P-1032

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

This is a decision on the electronic petition, filed February 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 February 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
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)
6,145,068	2000-11-07	08/931,330	1997-09-16	97-1007

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	/Lesley Coulson Boveri/	Date (YYYY-MM-DD)	2010-02-26
Name	Lesley Coulson Boveri	Registration Number	46642

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.

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 5880905
Issue Date: March 9,1999
Application No. 08931347
Filed: September 16,1997
Attorney Docket No. SEA-2537

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

This is a decision on the electronic petition, filed March 5,2008 ,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 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 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)
5,880,905	1999-03-09	08/931,347	1997-09-16	501.48600X00

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 E. Schiavelli/	Date (YYYY-MM-DD)	2008-03-05
Name	Alan E. Schiavelli	Registration Number	32087

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
WASHINGTON, D.C. 20231
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Paper No. 26 MAIL

APR 26 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Robert J. Hollingshead
MORGAN, LEWIS & BOCKIUS LLP
1800 M STREET, N.W.
Washington, DC 20036-5869

In re Application of:
Tomohiro Kawata et al.
Application No.: 08/931,615
Filed: September 16, 1997
For: SPEAKER UNIT

DECISION GRANTING PETITION
TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on January 28, 2002, requesting that the shortened statutory period for reply set forth in the Office communication mailed November 27, 2001 and to request oral hearing be reset to run from the date on which the Office communication was actually received at the correspondence address of record.

The petition is **GRANTED**.

Petitioner provided a statement that the Office communication in question was received at the correspondence address of record on January 15, 2002. The petition was filed within two weeks of receipt of the Office communication. A substantial portion of the set reply period had elapsed on the date of receipt. Furthermore, the Office communication was mailed between October 13, 2001 and January 2, 2002, when delivery of mail from the Office to certain regions of the country was delayed.

Accordingly, the shortened statutory period that was originally set forth in the Office communication originally mailed on November 27, 2001 is hereby reset to run FROM THE ACTUAL RECEIPT DATE OF THE OFFICE communication, January 15, 2002. A two-month period for reply and to request an oral hearing run from the actual date of the receipt of the Examiner Answer, January 15, 2002. Applicants are referred to MPEP section 1209 and CFR 1.17 (d) for proper fees required to request oral hearing.

The application will then be forwarded to Board of Patent Appeals and Conferences for further action.

James L. Dwyer, Director
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 32

MORGAN LEWIS & BOCKIUS
1800 M STREET NW
WASHINGTON, DC 20036-5869

COPY MAILED

APR 2 5 2003

OFFICE OF PETITIONS

In re Application of :
Kawata et al. :
Application No. 08/931,615 : ON PETITION
Filed: September 16, 1997 (CPA: May 24, 1999) :
Attorney Docket No. 041464-5018-01 :

This is a decision on the petition filed January 31, 2003, requesting under 37 CFR 1.183 that the rules be suspended where they specify that a Reply Brief be filed within two (2) months of the mailing of the Examiner's Answer.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.183." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Facts:

On September 6, 2001, applicant's Appeal Brief was filed.

In response, on November 27, 2001, an Examiner's Answer was mailed to the address of record.

The response was not received until January 15, 2002.

MPEP 710.06 states that when a office action is received late that the period to reply may be reset.

> The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met: . . . (C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address . . . and (2) a statement setting forth the date of receipt of the Office action at the correspondence address.

Petitioner requested the time period to file a reply be reset. Per MPEP 710.06, on April 26, 2002, the period of time was reset to run from "the date of receipt of the Office action at the correspondence address."

As no extensions of time were obtained pursuant to 37 CFR 1.136(b), the two month period for both submission of a Reply Brief pursuant to 37 CFR 1.193(b) expired on March 16, 2002.

Analysis:

In order for a petition under 37 CFR 1.183 to be granted, petitioner must demonstrate the existence of an extraordinary situation where justice requires waiver of one or more federal regulations. It is the responsibility of the Commissioner to determine the definitions of the terms "extraordinary" and "as justice requires" as the terms are used in 37 CFR 1.183.[1] The Commissioner drafted the federal regulations which may be waived including 37 CFR 1.183. The Commissioner is the party responsible for determining when a party has demonstrated that an "extraordinary" situation exists such that "justice requires" waiver of a federal regulation.

In determining when waiver is appropriate, the Office *may* consider the circumstances when courts have exercised their equitable powers to waive requirements of a statute or regulation on behalf of a party. Courts are permitted to waive certain statutory requirements such as time limits.[2] Courts, in determining when waiver is proper, have required due diligence and required more than a "garden variety claim of excusable neglect."[3] The Federal Circuit has stated, "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."[4] Factors which may not justify tolling include: pro se status, illiteracy, deafness, lack of legal training, lack of knowledge of the law, lack of knowledge of a legal process, and lack of legal representation.[5] An attorney's lack of

---

[1] See Bowles, Price Administrator v. Seminole Rock & Sand Co., 325 U.S. 410, 413-414, 89 L. Ed. 1700, 1702, 65 S. Ct. 1215, 1217 (1945) ("Since this involves the interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt. . . . [T]he ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.")

[2] See Wood-Ivey Sys. Corp. v United States, 4 F.3d 961, 964 (Fed. Cir. 1993) (Plager, J., concurring) ("Since Irwin [v. Department of Veterans Affairs, 498 U.S. 89, 112 L. Ed. 2d 435, 111 S. Ct. 453, (1990)], compliance with statutory time limits is no longer jurisdictional, in the old sense that when a Congressionally specified time limit had expired a court had no power to entertain the case. The presumption is now to the contrary. The court has jurisdiction to entertain the suit and to determine on the merits if equitable relief from the time bar is warranted.")

[3] See Wiggins v. State Farm Fire and Casualty Co., 153 F. Supp. 2d 16, 21 (D. D.C. 2001) ("A court can equitably toll the statute of limitations . . . plaintiff will not be allowed extra time to file unless he has exercised due diligence, and the plaintiff's excuse must be more than a 'garden variety claim of excusable neglect.'") (citations omitted).

[4] U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983) (citations omitted) ("Lockheed had several means at its disposal which it could have employed to guarantee compliance with the regulation, yet it neglected to use any of them. 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 also: Grymes v. Sanders et al., 93 U.S. 55, 61; 23 L. Ed. 798, 801 (1876) ("Mistake, to be available in equity, must not have arisen from negligence. . . . The party complaining must have exercised at least the degree of diligence 'which may be fairly expected from a reasonable person.') (citing Kerr on Fraud and Mistake, 407); Garcia v. Office of Personnel Management, 2001 U.S. App. LEXIS 21616, 6 (Fed. Cir. 2001) ("Equity will not intervene, however, to protect a claimant from his or her own failure to exercise due diligence in preserving their legal rights.") (citing Irwin v. Department of Veterans Affairs, 498 U.S. 89, 95 (1990)); Goetz & Goetz v. Secretary of Health and Human Services, 2001 U.S. App. LEXIS 943, 5 (Fed. Cir. 2001) ("the special master's finding of a lack of due diligence was not arbitrary, capricious, or an abuse of discretion, and precludes the application of equitable tolling.") (citing Baldwin County Welcome Ctr. V. Brown, 466 U.S. 147, 151, 80 L. Ed. 2d 196, 104 S. Ct. 1723 (1984) which states, "One who fails to act diligently cannot invoke equitable principles to excuse their lack of diligence.")

[5] See Felder v. Johnson, 204 F.3d 168 171-172 (5th Cir. 2000) (Pro se status is not "rare and exceptional" circumstance, but is typical of those bringing a 28 U.S.C. § 2254 claim. "Mere ignorance of the law or lack of knowledge of filing deadlines does not justify equitable tolling or other exceptions to a law's requirements.") (citing United States v. Flores, 981 F.2d 231, 236 (5th Cir. 1993) as "holding pro se status, illiteracy, deafness, and lack of legal training are not external factors excusing abuse of the writ."); citing Barrow v. New Orleans S.S. Ass'n, 932 F.2d 473, 478 (5th Cir. 1991) as "holding equitable tolling . . . within the Age Discrimination in Employment Act not warranted by plaintiff's unfamiliarity with legal process, his lack of representation, or his ignorance of his legal rights.", (other citations omitted)).

knowledge, misinterpretation of a law, miscalculation of a time period, and failure to exercise due care and diligence will not justify waiver.[6]

A party's inadvertent failure to comply with the requirements of a rule is simply not an extraordinary situation that would warrant waiver of a rule under 37 CFR 1.183.[7]

There is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of the rules.

The MPEP clearly states that when a period of time is reset that the new period of time will run from the date the Office action was received. Petitioner has failed to prove that petitioner was reasonable and prudent in expecting the new period to be reset to run from the date of the decision on the petition.

Since the petition lacks a showing that this is an extraordinary situation, the petition under 37 CFR 1.183 is subject to dismissal.

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

The differing addresses raise the issue of whether the date of receipt of January 15, 2002, is the date the examiner's action was received at the correspondence address of record or is the date the action was received at the address on the petition. The Office need not address this issue at the time since the petition is being dismissed for other reasons.

Petitioner delayed filing the instant petition from April 26, 2002, until January 31, 2003. The Office need not address whether the entire delay was reasonable and prudent since the petition is being dismissed for other reasons.

As there is no requirement for the timely submission of a Reply Brief, to avoid the abandonment of an application, the failure to timely submit a Reply Brief has not resulted in the abandonment

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[6] See Harris v. Hutchinson, 209 F.3d 325, 330-331 (4th Cir. 2000) (Plaintiff argues that he relied on "negligent and erroneous advice" of his attorney. Attorney agrees his advice was erroneous. The court holds, "[A] mistake by a party's counsel in interpreting a statute of limitations does not present the extraordinary circumstance beyond the party's control where equity should step in to give the party the benefit of his erroneous understanding.") (citing Taliani v. Chrans, 189 F.3d 597, 598 (7th Cir. 1999) as "holding that a lawyer's miscalculation of a limitations period is not a valid basis for equitable tolling."; citing Sandvik v. United States, 177 F.3d 1269, 1272 (11th Cir. 1999) (per curiam) as "refusing to toll the limitations period where the prisoner's delay was assertedly the result of a lawyer's decision to mail the petition by ordinary mail rather than to use some form of expedited delivery."; citing Gilbert v. Secretary of Health and Human Services, 51 F.3d 254, 257 (Fed. Cir. 1995) as "holding that a lawyer's mistake is not a valid basis for equitable tolling."; other citations omitted.)

[7] 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); Vincent v. Mossinghoff, 230 USPQ 621 (D.D.C. 1985) (Misunderstanding of 37 CFR 1.8 not unavoidable delay in responding to Office Action); 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); In re Chicago Historical Antique Automobile Museum, Inc., 197 USPQ 289 (Comm'r Pats. 1978) (Since certificate of mailing procedure under 37 CFR 1.8 was available to petitioner, lateness due to mail delay not deemed to be extraordinary situation).

of this application. Accordingly, this application is not abandoned, and the provisions of 37 CFR 1.137 do not apply in this instance. Nonetheless, it is appropriate to apply the principles thereof to the situation at issue. Since 37 CFR 1.183 is based on equity, the Office may determine various requirements for relief and forms of relief. The Office offers the following remedy to petitioner.

Petitioner may wish to consider filing a petition to the Commissioner requesting acceptance of the delayed reply brief as if timely filed on the grounds that the delay was unintentional.

A petition requesting acceptance of a delayed Reply Brief on the grounds of unintentional delay must be filed promptly and such petition must be accompanied by:
(1) the reply brief (which has already been filed), and
(2) the petition fee set forth in 37 CFR 1.17(m), and
(3) a statement that the "delay was unintentional."

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 Petitions Attorney Steven Brantley at (703) 306-5683.

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

cc: Morgan, Lewis & Bockius
1111 Pennsylvania Ave., NW
Washington, DC 20004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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DRINKER BIDDLE & REATH (DC)
1500 K STREET, N.W.
SUITE 1100
WASHINGTON DC 20005-1209

MAILED

MAR 23 2010

OFFICE OF PETITIONS

In re Patent No. 7,103,195	:	
Application No. 08/931,615	:	
Filed: September 16, 1997	:	ON PETITION
Issued: September 5, 2006	:	
Attorney Docket No. 46978-5018-01	:	

This is a decision on the petition filed March 16, 2009, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name, of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-7751. Inquiries regarding the certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Joan Olszewski
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : February 22, 2003 **Paper No. 18**

TO : Supervisor, Art Unit 1617

1617

SUBJECT : Certificate of Correction Request in Patent No.: 6,096,787

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.

PLEASE COMPLETE THIS FORM AND RETURN WITH FILE, WITHIN 7 DAYS, TO CERTIFICATES OF CORRECTION BRANCH - PK 3-915/922 PALM LOCATION 7580 - TEL. N0. 305-8309

Ernest C. White, LIE
(703) 305- 8339

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:** _____

SREENI PADMANABHAN
PRIMARY EXAMINER

Supervisor

1617

Art Unit

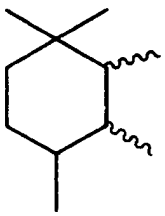
UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

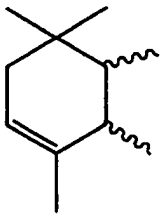
PATENT NO. : 6,096,787
DATED : August 1, 2000
INVENTOR(S) : Evans et al.

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

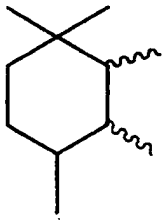
At column 4, lines 12-20, that portion of the chemical formula for Compound I reading:



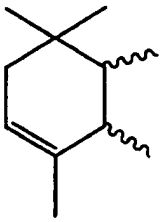
should read



Column 9, lines 1-10, *and*
Column 9, lines 1-10, that portion of the chemical formula for Compound I reading:

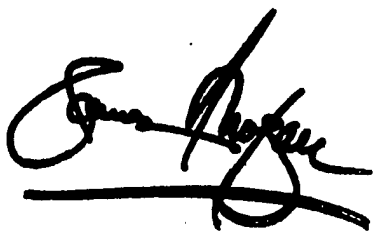


should read



Signed and Sealed this

First Day of April, 2003



JAMES E. ROGAN
Director of the United States Patent and Trademark Office

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. 18

CALFEE, HALTER & GRISWOLD,
LLP
800 SUPERIOR AVENUE
SUITE 1400
CLEVELAND, OH 44114

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AUG 2 2 2002

OFFICE OF PETITIONS

In re Application of :
Shalom Ohayon :
Application No. 08/931,721 : DECISION ON PETITION
Filed: November 15, 1996 :
Attorney Docket No. CTC-1925 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 29, 2000, to revive the above-identified application. The delay in treating this petition is regretted.

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 properly and timely reply to the Notification of Non-compliance with 37 CFR 1.192(c) (hereinafter "Notice"), mailed on July 19, 2000. The Notice set a one (1) month period for reply. No extensions of time under 37 CFR 1.136(a) were available. Accordingly, the application became abandoned on August 20, 2000. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

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 notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which prima facie places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c); (**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 item (**1**) above.

As to item (**1**), Petitioner has submitted a reply in the form of an Amended Appeal Brief, however, the amended brief fails to place the application in condition for allowance.

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

By mail: 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 matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
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
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Paper No. 20

SIM & MCBURNEY
330 UNIVERSITY AVENUE
6TH FLOOR
TORONTO, M571R-7 CA CANADA

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SEP 17 2002

OFFICE OF PETITIONS

In re Application of :
Shalom Ohayon :
Application No. 08/931,721 :
Filed: September 16, 1997 :
Attorney Docket No. :
1038-729MIS: :

CORRECTED
DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 29, 2000, to revive the above-identified application. The delay in treating this petition is regretted.

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 properly and timely reply to the Notification of Non-compliance with 37 CFR 1.192(c) (hereinafter "Notice"), mailed on July 19, 2000. The Notice set a one (1) month period for reply. No extensions of time under 37 CFR 1.136(a) were available. Accordingly, the application became abandoned on August 20, 2000. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

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 notice of appeal and the requisite fee; a continuing application; an amendment or request for reconsideration which prima facie places the application in condition for allowance, or a first or second submission under 37 CFR 1.129(a) if the application has been pending for at least two years as of June 8, 1995, taking into account any reference made in such application to any earlier filed application under 35 U.S.C. 120, 121 and 365(c); (**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 item (**1**) above.

As to item (**1**), Petitioner has submitted a reply in the form of an Amended Appeal Brief, however, the amended brief fails to place the application in condition for allowance.

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

By mail: 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 matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 21

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TORONTO, M571R-7 CA CANADA

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DEC 23 2002

OFFICE OF PETITIONS

In re Application of :
Papadopoulou et al. :
Application No. 08/931,721 : DECISION ON PETITION
Filed: September 16, 1997 :
Attorney Docket No. :
1038-729MIS: :

This is a decision on the Renewed Petition under 37 CFR 1.137(b), filed September 29, 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.

After a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Commissioner. Therefore, it is extremely important that petitioner submit **a complete and proper reply as the condition for allowance requires**. The Commissioner's decision will be based solely on the administrative record in existence.

The above-identified application became abandoned for failure to properly and timely reply to the Notification of Non-compliance with 37 CFR 1.192(c) (hereinafter "Notice"), mailed on July 19, 2000. The Notice set a one (1) month period for reply. No extensions of time under 37 CFR 1.136(a) were available. Accordingly, the application became abandoned on August 20, 2000.

A petition to revive the application under 37 CFR 1.137(b), along with an Amended Appeal Brief, were filed on September 29, 2000. The petition was dismissed by this Office in a Decision mailed on August 22, 2002, and corrected and re-mailed on September 17, 2002. The Decisions informed Petitioner that the Amended Appeal Brief failed to place the application in condition for allowance.

Petitioner files the instant Renewed Petition wherein Petitioner initially corrects for the Office the first named applicant in the above-identified application, the change of which is incorporated herein.

Petitioner also takes issue, in the Renewed Petition, with the Notice of Abandonment, mailed on September 10, 2002, which, Petitioner alleges, incorrectly advises that the reason for abandonment is Petitioner's failure to properly reply to the Office letter, as opposed to the Notice of Non-Compliance. The Renewed Petition further argues that Applicants have already filed a reply to the Office letter, namely, the Notice of Appeal and Appeal Brief, and thus Applicants reply "was a proper reply to the outstanding requirement".

This argument incorrectly assumes that the Notice of Appeal and Appeal Brief were a proper reply to the final rejection. The Appeal brief was defective. A defective Appeal Brief is not a complete and proper reply to the final rejection. Petitioner was so notified and given one month to correct the deficient Appeal Brief; however, Petitioner has yet to make the required correction(s), and has thus failed to file a complete and proper reply as the condition of the case requires. Petitioner is directed to the MPEP, section 711.02, which reads:

> 37 CFR 1.135(a) specifies that an application becomes abandoned if applicant "fails to reply" to an office action within the fixed statutory period. This failure may result either from (A) failure to reply within the statutory period, or (B) insufficiency of reply, i.e. failure to file a "complete and proper reply, as the condition of the case may require" within the statutory period (37 CFR 1.135(b)).

This section explains that abandonment occurs when petitioner fails to timely and properly reply to the outstanding Office action. In this instance, the outstanding Office action is the Office letter mailed July 19, 2000. Petitioner filed a timely reply; however, the reply was not a proper reply. Petitioner was so notified in a Notification of Non-compliance with 37 CFR 1.192(c), and given a one month period to correct the reply to wit: the Appeal Brief, and thus submit a complete and proper reply to the Office letter of July 19, 2000. Because Petitioner has failed to satisfy the Notification of Non-compliance with 37 CFR 1.192(c), Petitioner has failed to file a timely and proper

reply to the outstanding Office action. The application therefore, remains abandoned.

The Office letter mailed July 19, 2000, and the Notice of Non-Compliance mailed July 19, 2000, are not mutually exclusive documents, but the latter explains that the reply to the former is not a complete and proper reply, and provides an opportunity to correct the deficiency. Moreover, Petitioner's focus on whether the Notice of Abandonment correctly or incorrectly advises the reason for abandonment is misplaced.

Further to this, Petitioner's assertion that the Notice of Appeal and Appeal Brief, and thus Applicants reply "was a proper reply to the outstanding requirement", ignores Petitioner's own argument - that the reason the application became abandoned is for failing to comply with the Notice of Non-Compliance with 37 CFR 1.192(c). Petitioner was notified *on several occasions prior to receiving the Notice of Abandonment* that the reason for abandonment of the application was the failure to file an Appeal Brief that complies with 37 CFR 1.192(c). (Emphasis supplied). Petitioner was advised in the Notice of Non-Compliance with 37 CFR 1.192(c), mailed on July 19, 2000, that the Appeal Brief, filed on April 26, 2000, was defective. In his petition filed on September 29, 2000, Petitioner acknowledged that the application was abandoned for failure to timely respond to a Notification of Non-Compliance [albeit Petitioner incorrectly cited to 37 CFR 1.93(c), when the applicable section, as stated in the Notice, is 37 CFR 1.192(c)]. Petitioner was again advised of the reason that the application is held abandoned in the Decision on Petition mailed on August 22, 2002. The Notice of Abandonment was then mailed on September 10, 2002, well after Petitioner had been notified on at least two occasions, and well after Petitioner himself acknowledged that the application was abandoned for failure to timely respond to a Notification of Non-Compliance. Finally, in the Corrected Decision on Petition mailed September 17, 2002, it was reiterated to Petitioner that the application "became abandoned for failure to properly and timely reply to the Notification of Non-compliance with 37 CFR 1.192(c) (hereinafter "Notice"), mailed on July 19, 2000." To now argue that the Notice of Appeal and Appeal Brief was a proper reply completely ignores the Notice of Non-Compliance.

Because the Appeal Brief fails to comply with 37 CFR 1.192(c), it is not a complete and proper reply to the Office letter, mailed July 19, 2000. In this instance, Petitioner's failure is a result of the insufficiency of the reply, specifically, the

failure to file a complete and proper reply, as the condition of the case requires. The application is thus abandoned for failure to "timely file a proper reply to the Office letter mailed on July 19, 2002", as correctly stated in the Notice of Abandonment.

It is also noted that a Notice of Abandonment in no way affects the status of the application. The Manual for Patent Examining Procedure ("MPEP"), section 714.17, provides that "[t]he examiner *should* notify the applicant or attorney at once that the application has been abandoned by using Notice of Abandonment form PTOL-1432." (Emphasis supplied). The mailing of a Notice of Abandonment is not a requirement of this Office, but a courtesy to Petitioner. Further to this, section 711.04(c), provides that "in no case will mere failure to receive a notice of abandonment affect the status of an abandoned application." The Notice of Abandonment was obviously not the cause of Petitioner's failure to file a complete and proper Appeal Brief in the first instance. In this instance petitioner was timely notified that the Appeal Brief was defective, and has yet to correct the deficiencies therein, and while the Office attempts to notify an applicant in a timely manner of errors made in the filing of any replies to Office actions, the Office is not obligated to do so prior to the abandonment of the application.

Petitioner finally argues in the Renewed Petition that the Corrected Decision is incorrect when it states that "'the required reply, which may be met by the filing of a notice of appeal and appeal and requisite fee...'", because a Notice of Appeal and Appeal Brief have already been submitted. *Renewed Petition at p.2, quoting* the September 17, 2002 *Corrected Decision on Petition at p.1.*

Petitioner is advised that the statement uses the word "may", and describes possible responses which may constitute the required reply. Again, Petitioner is advised that this application is abandoned because the Appeal Brief in not in compliance with 37 CFR 1.192(c), and thus does not constitute the required reply to the Office letter.

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

By mail: 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 matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
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
WASHINGTON, D.C. 20231
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DIW 02-03

Paper No. 25

SIM & MCBURNEY
330 UNIVERSITY AVENUE
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TORONTO ON M57 1R7
CANADA

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FEB 10 2003

OFFICE OF PETITIONS

In re Application of :
Papadopoulou et al. :
Application No. 08/931,721 : ON PETITION
Filed: 16 September, 1997 :
Attorney Docket No. 1038-729MIS: :

This is a decision in reference to the paper styled "Further Renewed Petition to Revive an Abandoned Application" filed on 23 January, 2003, which, in the absence of a fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment

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.

This application became abandoned on 20 August, 2000, for failure to file a timely response to the Notification of Non-Compliance with 37 CFR 1.192(c), mailed on 19 July, 2000, which set a one (1)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The petition filed on 29 September, 2000, was dismissed in a decision mailed on 22 August, 2002. The renewed petition filed on 12 November, 2002, was dismissed on 23 December, 2002.

The present petition is accompanied by a Request for Continued Examination (RCE) Request and payment therefor. The RCE Request

indicates that the present renewed petition is the submission required under 37 CFR 1.114.

A review of the official file reveals that the petition fee required by 37 CFR 1.137(b) was never paid. On 29 September, 2000, petitioners submitted a payment of $130.00. However, the petition fee for a petition under 37 CFR 1.137(b) was $1,210.00 on 29 September, 2000. As such, a proper petition under 37 CFR 1.137(b) was never filed. As the fee for filing a petition under 37 CFR 1.137(b) is now $1,300.00, a petition fee of $1,300.00 is due. However, the Office will credit the $130.00 previously paid towards the fee due. As such, a deficiency of $1,170.00 is due with any petition under 37 CFR 1.137(b).

In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.[1] The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.[2] As petitioner has not alleged circumstances which would warrant the withdrawal of the holding of abandonment, the petition will be dismissed.

Additionally, petitioner is also advised that the petition clearly fails to meet the requirements of 37 CFR 1.114. 37 CFR 1.114(c) provides:

> A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. § 132 is outstanding, the submission must meet the reply requirements of § 1.111.

The petition in and of itself, however, may not serve as the submission. As 37 CFR 1.137(b)(1) indicates, a submission under 37 CFR 1.114 is required. When an RCE is the reply filed pursuant to 37 CFR 1.137(a)(1) or 1.137(b)(1) to revive the application, the submission accompanying the RCE must be a reply responsive within the meaning of 37 CFR 1.111. Consideration of whether the submission is responsive within the meaning of 37 CFR 1.111 to the last Office action is done without factoring in the

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[1] See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

[2] MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

"final" status of such action. The submission may be a previously filed amendment after final or a statement that incorporates by reference the arguments in a previously filed appeal or reply brief.[3]

Petitioner should file a renewed petition with a proper submission under 37 CFR 1.114.

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.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[3] See MPEP 706.07(h), paragraph II; MPEP 711.03(c)(2)(d).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 03-03

Paper No. 28

SIM & MCBURNEY
330 UNIVERSITY AVENUE
6TH FLOOR
TORONTO ON M57 1R7
CANADA

COPY MAILED

MAR 2 7 2003

OFFICE OF PETITIONS

In re Application of
Papadopoulou et al.
Application No. 08/931,721
Filed: 16 September, 1997
Attorney Docket No. 1038-729MIS:

ON PETITION

This is a decision in reference to the paper styled "Further Renewed Petition to Revive an Abandoned Application" filed on 19 March, 2003, which, is being treated as a petition under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 20 August, 2000, for failure to file a timely response to the Notification of Non-Compliance with 37 CFR 1.192(c), mailed on 19 July, 2000, which set a one (1)-month shortened period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. The petition filed on 29 September, 2000, was dismissed in a decision

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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)).

mailed on 22 August, 2002. The renewed petition filed on 12 November, 2002, was dismissed on 23 December, 2002. The renewed petition filed on 23 January, 2003, was dismissed on 10 February, 2003.

Petitioners have now paid the petition fee required under 37 CFR 1.137(b) of $1300.00.

The present petition is accompanied by an additional Request for Continued Examination (RCE) Request and payment therefor. The RCE Request indicates that the reply brief filed on 29 September, 2000, is the submission required under 37 CFR 1.114.

The application is being forwarded to Technology Center 1600 for processing of the RCE and submission.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

DWood

Douglas I. Wood
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

LEROY J. BRYAN
147 FROGTOWN RD.
E. MILLSBORO PA 15433

COPY MAILED

NOV 0 9 2007

OFFICE OF PETITIONS

In re Patent No. 5,762,308
Issue Date: June 9, 1998
Application No. 08/931,823
Filed: September 16, 1997
Attorney Docket No. GOLF UMBRELLA HOLDER

ON PETITION

This is a decision on the petition under 37 CFR 1.378(e), filed September 18, 2007, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 9, 2006 for failure to pay the 7.5 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.

A review of Office finance records reveals that patentee has submitted more fees than are required. Petitioner has submitted a total of $4,670.00 when in fact, a total of $3,190.00 is actually due. The fees required are: 7.5 year maintenance fee of $1,150.00; $1,640.00 surcharge; and $400.00 petition fee. Thus, patentee is entitled to a refund of $1,480.00. Patentee may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

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

TO:

12, 7, 7

2007 DEC 10 PM 5:04

1599

Refund Dept
US Patent Office
Box 1450
Alexandria, Va. 22313

FROM:

Leroy Bryan
147 Frogtown Rd
E. Millsboro, Pa. 15433

Subject; REFUND

Please refund the enclosed listed $1,480.00, to the above address.

Sincerely,

Leroy Bryan

Leroy Bryan

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

LEROY J. BRYAN
147 FROGTOWN RD.
E. MILLSBORO PA 15433

COPY MAILED

NOV 0 9 2007

OFFICE OF PETITIONS

In re Patent No. 5,762,308
Issue Date: June 9, 1998
Application No. 08/931,823
Filed: September 16, 1997
Attorney Docket No. GOLF UMBRELLA HOLDER

ON PETITION

This is a decision on the petition under 37 CFR 1.378(e), filed September 18, 2007, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 9, 2006 for failure to pay the 7.5 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.

A review of Office finance records reveals that patentee has submitted more fees than are required. Petitioner has submitted a total of $4,670.00 when in fact, a total of $3,190.00 is actually due. The fees required are: 7.5 year maintenance fee of $1,150.00; $1,640.00 surcharge; and $400.00 petition fee. Thus, patentee is entitled to a refund of $1,480.00. Patentee may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

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12, 7, 7

2007 DEC 10 PM 5:04

1599

Refund Dept
US Patent Office
Box 1450
Alexandria, Va. 22313

FROM:

Leroy Bryan
147 Frogtown Rd
E. Millsboro, Pa. 15433

Subject; REFUND

Please refund the enclosed listed $1,480.00, to the above address.

Sincerely,

Leroy Bryan

Leroy Bryan

Adjustment date: 01/16/2008 CKHLOK
08/13/2007 MBLANCO 00000008 5762308
01 FC:1599 -3255.00 OP

Adjustment date: 01/16/2008 CKHLOK
03/05/2007 MGEBREM1 00000063 5762308
01 FC:1599 -1415.00 OP

01/16/2008 CKHLOK 00000012 5762308
01 FC:1599 3190.00 OP

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01/16/2008 CKHLOK 0000160820

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01/16/2008 CKHLOK 0000160821

CHECK Refund Total: $65.00

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND 5762308

1 Date of Request: 1-15-08 | 2 Serial/Patent # 08/977823

3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
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	Issue			$
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	Maintenance			$
	Assignment			$
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7 TOTAL AMOUNT OF REFUND $ ~~1480~~

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9 [ ][ ]--[ ][ ][ ][ ]

10 REASON:

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11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Karen Creasy TITLE: Petitions Examiner

SIGNATURE: K Creasy PHONE: 2-3208

OFFICE: Petitions

****

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Crystal Park One, Room 802B

FORM PTO 1577
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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 15

Eugene J. Molinelli
Mcdermott Will & Emery
600 13th Street NW
Washington, DC 20005-3096

OCT 23 2000

In re Application of: Jakob Nielsen)
Application No. 08/932,239)
Filed: September 17, 1997) DECISION ON PETITION
For: INVISIBLE AND ONE-PIXEL SCROLL)
BARS)

This is a decision on a petition, filed 22 March 2000, under 37 C.F.R. § 1.181(a) requesting the Director to reverse the Primary Examiner's holding as to the Grouping of Claims under appeal as set forth in the Examiner's Answer (mail date 16 February 2000).

37 C.F.R. § 1.181(a) states:

> (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 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 or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

In this instance, Applicant disagrees with Examiner's position on the grouping of claims. This is an issue in the appeal subject to the determination of the Board of Patent Appeals and Interferences. Therefore, this is not proper subject matter for petition under 37 C.F.R. § 1.181(a).

The petition is **DISMISSED**

Applicant is advised that the Reply Brief affords Applicant the opportunity for contesting the position taken by the Primary Examiner in the Examiner's Answer.

The application file is being returned to the Board of Patent Appeals and Interferences where it will await a decision.

Margaret A. Focarino, Director
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 17

Eugene J. Molinelli
Mcdermott Will & Emery
600 13th Street NW
Washington, DC 20005-3096

MAIL

JUL 0 5 2001

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Jakob Nielsen)
Application No. 08/932,239)
Filed: September 17, 1997) DECISION ON PETITION
For: INVISIBLE AND ONE-PIXEL)
SCROLL BARS)

This is a decision on the petition, filed 20 November 2000, for review of a Director's decision under 37 C.F.R. § 1.181(a). The petition is being treated as a request for reconsideration of the decision (mail date 23 October 2000) dismissing the original petition, filed 22 March 2000, under 37 C.F.R. § 1.181(a) requesting the Director to reverse the Primary Examiner's holding as to the Grouping of Claims under appeal as set forth in the Examiner's Answer (mail date 16 February 2000).

The petition under 37 CFR §§ 1.181 requested that the examiner be directed to treat each claim as separately argued.

OPINION

A. Reviewability of Propriety of Appeal Brief

37 C.F.R. § 1.181(a) states:

> (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 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 or reviewed by the Commissioner; and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

MPEP §1206 states in relevant part:

> **REVIEW OF BRIEF BY EXAMINER**
> The question of whether a brief complies with the rule is a matter within the jurisdiction of the examiner. 37 CFR 1.192(d) provides that if a brief is filed which does not comply with all the requirements of paragraph (c), the appellant will be notified of the reasons for noncompliance

The question as to the compliance of the brief with the rule is not an appealable issue and is properly before the examiner. Therefore, petition to invoke supervisory authority is appropriate.

B. Compliance with 37 C.F.R. §1.192(c)(7)

In the original decision we took the position that as the examiner did not refuse entry of the Brief for non-compliance with 37 C.F.R. §1.192(c)(7), the statement made under the heading "Grouping of Claims" was not germane and the application was properly before the board.

Upon further consideration the language used "... because applicant does not supply reasons ... See 37 C.F.R. §1.192(c)(7)" creates ambiguity. The language raises the possibility that the Examiner is objecting to the Brief as not complying with 37 C.F.R. §1.192(c)(7).

Accordingly, the Petition is **GRANTED**. The Examiner is directed to appropriately address the issue of whether the claims stand or fall independently.

The examiner should take care to distinguish between the following situations:

(a) No reasons supplied

Brief fails to meet the requirements of 37 C.F.R. §1.192(c)(7) and a Form PTO-462 "Notification of Non-compliance with 37 C.F.R. §1.192(c)" should be issued.

(b) Reasons supplied which in examiner's view are inadequate to establish that the claims stand on their own.

The brief complies. No reference to 37 C.F.R. §1.192(c)(7) is appropriate. The Examiner may address the ***merits*** of applicant's arguments in the Answer.

Applicant's statement that each claim stands or falls independently coupled with the identification of features in claims 31, 32, and 33 which are not found in claim 25 (see page 8 of Appeal brief, Paper No. 11, filed January 18, 2001) is adequate to comply with 37 C.F.R. §1.192(c)(7).

C. Statement of Issues Under Appeal

The Appeal Brief is fundamentally flawed in its identification of the Issues.

The relevant portion of MPEP §1206 reproduced below (with emphasis added) sheds light on the definition of an Issue:

> (6) Issues. A concise statement of the issues presented for review. ***Each stated issue should correspond to a separate ground of rejection which appellant wishes the Board of Patent Appeals and Interferences to review.*** While the statement of the

> issues must be concise, it should not be so concise as to omit the basis of each issue. For example, the statement of an issue as "Whether claims 1 and 2 are unpatentable" would not comply with 37 CFR 1.192(c)(6). Rather, the basis of the alleged unpatentability would have to be stated, e.g., "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 103 over Smith in view of Jones," or "Whether claims 1 and 2 are unpatentable under 35 U.S.C. 112, first paragraph, as being based on a nonenabling disclosure." The statement would be limited to the issues presented, and should not include any argument concerning the merits of those issues.

The statement under the heading "Issues" from page 5 of the Appeal Brief (Paper No. 11, filed January 18, 2001) is reproduced below with mild editing and with emphasis added:

> The **only issue on appeal** is whether the Examiner erred in rejecting claims 25 and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over Wagstaff, S. [full citation omitted] in view of Matthies et al. [full citation omitted].

Review of the final rejection (paper No. 6, August 9, 1999) reveals that Claims 25 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagstaff in view of Matthies et al. and claims 32-33 are separately rejected under 35 U.S.C. § 103(a) as being unpatentable over Wagstaff in view of Matthies et al ***and further in view of*** Macintosh Human Interface Guidelines.

Thus, there are actually two distinct rejections outstanding. Applicant's statement of the sole issue does not correspond " ***to a separate ground of rejection"***. Furthermore, because 37 C.F.R. §1.192(c)(7) applies to "each ground of rejection which applicant contests" this statement of the issues is internally inconsistent with the statement under the heading "Grouping of Claims" which states "All claims are argued separately and each stands or falls independently of any other claim".

The Examiner's Answer is **VACATED.**

The application is hereby **REMANDED** to the Examiner to issue an appropriate action with respect to the compliance with 37 CFR §§ 1.192(c)(6).

Margaret A. Focarino, Group Director
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
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Washington, D.C. 20231

Mailed:

Paper Number 14

AUG - 8 2001

In re Patent No. 6,042,998
Issue Date: March 28, 2000
Inventors: Brueck et al.
Serial No.08/932,428
Filed: September 17, 1997
For: METHOD AND APPARATUS FOR EXTENDING SPATIAL FREQUENCIES IN PHOTOLITHOGRAPHY IMAGES

DECISION ON PETITION

This is a decision on the petition, filed September 17, 1999, to correct inventorship under 37 C.F.R. § 1.48(a). The patent issued on March 28, 2000. Because the patent has issued, the petition has been considered as a petition under 37 C.F.R. § 1.324 for correction of inventorship of patents.

As set forth in paragraph (b) of 37 C.F.R. § 1.324:

(b) Any petition pursuant to paragraph (a) of this section must be accompanied by:

1) Where one or more persons are being added, a statement from each person who is being added as an inventor that the inventorship error occurred without any deceptive intention on his or her part;

(2) A statement from the current named inventors who have not submitted a statement under paragraph (b)(1) of this section either agreeing to the change of inventorship or stating that they have no disagreement in regard to the requested change;

(3) A statement from all assignees of the parties submitting a statement under paragraphs (b)(1) and (b)(2) of this section agreeing to the change of inventorship in the patent, which statement must comply with the requirements of 3.73(b) of this chapter; and

(4) The fee set forth in 1.20(b).

Although the present petition is accompanied by the statements required in paragraphs (b)(1) and (b)(3), there is no statement from the originally named inventors stating that they agree to the change in inventorship or that they have no disagreement in regard to the requested change as required in paragraph (b)(2). Therefore, the petition is denied.

It is noted that even if the petition had been considered under 37 C.F.R. § 1.48(a) prior to issuance of the patent it would have been denied. 37 C.F.R. § 1.48(a) requires *filing of an oath or declaration by the actual inventor or inventors as required by 1.63 or as permitted by 1.42, 1.43 or 1.47.* The declaration filed with the petition of September 17, 1999 is not signed by all of the actual inventors.

The signature of the two original inventors, Steven R.J. Brueck and Saleem H. Zaidi, is missing. As this declaration differs from the original declaration by the addition of Steve Hersee and Kevin Malloy as inventors, the signatures of inventors Brueck and Zaidi on the original declaration can not be relied upon instead of new signatures on the declaration required under 37 C.F.R. § 1.48(a).

The petition is **DENIED**.

Janet C. Baxter
Supervisory Patent Examiner
Art Unit 1752

HOWARD I SOBELMAN
SNELL & WILMER
ONE ARIZONA CENTER
400 EAST VAN BUREN
PHOENIX AZ 85004-0001

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

Mailed: 4/28/05

chk
Paper Number _____

In re patent 6,042,998
Inventors : Brueck et al.

DECISION ON

PETITION

Patent No. 6,042,998
Issued: March 28, 2000
For: METHOD AND APPARATUS FOR EXTENDING SPATIAL FREQUENCIES IN PHOTOLITHOGRAPHY IMAGES

This is a response to the PETITION TO ADD INVENTOR PURSUANT TO 37 C.F.R.§ 1.324, filed February 23, 2005. The petition requests that Steve Hersee and Kevin Malloy be added as an inventor in the instant application.

37 CFR 1.324(b) requires that the amendment to the application 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.

Although petitioner has met requirements (1), (3) and (4), the instant petition has not met all of these requirements. The petition does not include an oath or declaration by each actual inventor as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47.

Therefore, the Petition is **DENIED**.

Cynthia H. Kelly
Supervisory Patent Examiner
TC1700
Technology Center 1700

HOWARD I SOBELMAN
SNELL & WILMER
ONE ARIZONA CENTER
400 EAST VAN BUREN
PHOENIX, AZ 85004-0001

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Oct. 22, 2008

TO SPE OF : ART UNIT 1756
SUBJECT : Request for Certificate of Correction for Appl. No.:/08/932428 /6042998

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

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.

/Mark F. Huff/, SPE 1795
11/25/2008

Comments: _____

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. 5887530
Issue Date: March 30,1999
Application No. 08932488
Filed: September 18,1997
Attorney Docket No. 4476-06

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

This is a decision on the electronic petition, filed December 26,2007 ,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 December 26,2007. 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)
5887530	1999-03-30	08932488	1997-09-18	

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	/Austin G. Bosarge/	Date (YYYY-MM-DD)	2007-12-26
Name	Austin G. Bosarge	Registration Number	52639

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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 30

GREENBLUM & BERNSTEIN
1941 ROLAND CLARKE PLACE
RESTON, VA 20191

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OFFICE OF PETITIONS
A/C PATENTS

ON PETITION

In re Application of :
William Doviak et al :
Application No. 08/932,532 :
Filed: September 17, 1997 :
Attorney Docket No. P15733.A28 :

This is a decision on the petition under 37 CFR 1.313(b)(5), filed October 19, 2000, which is being treated as a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee. See 1233 OG 54 (April 11, 2000).

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 16, 2000 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.

Telephone inquiries should be directed to the undersigned at (703) 305-8680.

The application is being forwarded to Technology Center AU 2744 for processing of the request for continued examination under 37 CFR 1.114.

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
Washington, D.C. 20231
www.uspto.gov

Paper No. 42

GREENBLUM & BERNSTEIN
1941 ROLAND CLARKE PLACE
RESTON VA 20191

COPY MAILED

MAR 2 1 2002

OFFICE OF PETITIONS

In re Application of :
William Doviak et al :
Application No. 08/932,532 : ON PETITION
Filed: September 17, 1997 :
Attorney Docket No. P15733.A37 :

This is a decision on the petition, filed March 18, 2002, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 17, 2001 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 the undersigned at (703) 305-8680.

The application is being forwarded to Technology Center AU 2681 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
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 must be made in writing and should be accompanied by the new Issue Fee Transmittal Form PTOL-85(b), along with a copy of this decision. Additionally, if the issue fee has increased from the previously paid issue fee, the balance due must be submitted. **Failure to *timely* request *in writing* that the previously paid issue fee be applied towards the new Notice and payment of any balance due will result in the abandonment of the application.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070418

DATE : April 18, 2007

TO SPE OF : ART UNIT 1641

SUBJECT : Request for Certificate of Correction on Patent No.: 6,413,783 B1

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-910
Palm location **7590** - Tel. No. 305-8201

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance **Certificates of Correction Branch**

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

☒ **Approved** **All** changes apply.

☐ **Approved in Part** Specify below which changes **do not** apply.

☐ **Denied** State the reasons for denial below.

Comments:

LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE: Long Le **Art Unit** 1641

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 6,413,783 B1
DATED: September 17, 1997
INVENTOR(S): Jacob N. Wohlstadter et al

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

Patent cover, parenthesis 22, change filing date "Sep. 18, 1997" to --Sep. 17, 1997--.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Kramer Levin Naftalis & Frankel, LLP
Intellectual Property Department
1177 Avenue of the Americas
New York, NY 10036

MAILED

MAR 26 2010

OFFICE OF PETITIONS

In re Application of
Jacob N. Wohlstadter, et. al.
Application No. 08/932,985
Filed: September 18, 1997
Attorney Docket No. 370208-6220

DECISION DISMISSING PETITION

This is a decision on the petition, filed May 7, 2007, requesting that the above-identified application be accorded a filing date of September 17, 1997, instead of the presently accorded date of September 18, 1997 under the provisions of 37 CFR 1.10(c). The delay in responding is sincerely regretted.

The petition is **dismissed**.

Paragraph (c) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in" and of any other official notation by the USPS relied upon to show the date of deposit.

The petition lacks the showing required by item (1) above.

A review of the record shows that this patent issued on July 2, 2002. However, a petition under the provisions of 37 CFR 1.10(c) and the required evidence was not filed until May 7, 2007, which is over 5 years from the date of issuance.

Further, it is noted that a Notice of Allowance and Fee(s) Due was mailed on February 22, 2002 and the issue fee was timely paid on May 20, 2002. On June 13, 2002 an Issue Notification was mailed and the application subsequently issued as U.S. Patent No. 6,413,783 on July 2, 2002. Both the Notice of Allowance and the Issue Notification contained a recitation of the September 18, 1997 filing date, and represented a reminder that the date had not been corrected. Any petition to accord the above patent a filing date of September 17, 2007 should have been filed prior to the payment of the issue fee. Instead, applicant paid the issue fee on May 20, 2002, and allowed the application to issue with the September 18, 1997 filing date. By paying the issue fee, applicant acquiesced to the September 18, 1997 filing date accorded the application.

35 U.S.C. 254 states in part, "Whenever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Director may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patent."

In this case, there is nothing in the record, filed prior to issuance, which suggests that the filing date for the above application was incorrect. However, the record is clear that a petition to correct the filing date along with the Express Mail label was not presented until years after issuance; therefore, the above patent properly maintained a filing date of September 18, 1997.

Additionally, the showing of record points to a lack of diligence on the part of petitioner, and, in light of the extended delay, this petition is clearly untimely and subject to dismissal.

35 U.S.C. Chapters 25 and 30 provides for the amendment and correction of patents. In the absence of legislative intent to the contrary, when a statute expressly provides a specific remedy for a situation, the statute is deemed to exclude other remedies for such situations.[1] Therefore, any amendment or correction of the filing date of the application for the above-identified patent must be authorized by the provisions of 35 U.S.C. chapters 25 or 30.

35 U.S.C. Chapter 25 provides for the amendment and correction of a patent by: (1) reissue (35 U.S.C. §§ 251 and 252); (2) disclaimer (35 U.S.C. § 253); (3) certificate of correction (35 U.S.C. §§ 254 and 255); or (4) correction of named inventor (35 U.S.C. § 256). 35 U.S.C. chapter 30 provides for the amendment of a patent as a result of a reexamination proceeding (35 U.S.C. §§ 302 through 307).

The requested change to the filing date of the application for the above-identified patent does not involve disclaimer (35 U.S.C. § 253), correction of a named inventor (35 U.S.C. § 256), or an amendment (in reexamination) to distinguish the invention from the prior art or in response to a decision adverse to patentability (35 U.S.C. § 305). In addition, the requested change to the filing date of the application for the above-identified patent does not concern a mistake "clearly disclosed by the records of the [PTO]" (since petitioner did not present an "Express Mail" label showing a "date-in" inconsistent with the filing date accorded the application for the above-identified patent until after issuance of the application into a patent).[2]

Since the office is restricted by statute to act on a paper to change a filing date after the application has issued as a patent, the petition cannot be granted.

---

[1]See National R.R. Passenger Corp. v. National Ass'n of R.R. Passengers, 414 U.S. 453, 458 (1974) (expressio unius est exclusion alterius (the mention of one thing implies exclusion of another thing) is a standard principle of statutory construction); 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").

[2]See 35 U.S.C. § 254.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be delivered through one of the following mediums:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(571) 273-8300 ATTN: Office of Petitions
By Internet:	EFS-Web[3]

Any questions concerning this matter may be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 5964758
Issue Date: October 12,1999
Application No. 08933020
Filed: September 18,1997
Attorney Docket No. 2903.2

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

This is a decision on the electronic petition, filed February 15,2008 ,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 February 15,2008 . 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)
5964758	1999-10-12	08933020	1997-09-18	BRAB.P008.A

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	/davidbogartdort50213/	Date (YYYY-MM-DD)	2008-02-12
Name	David Bogart Dort	Registration Number	50213

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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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. 6027026
Issue Date: February 22,2000
Application No. 08933071
Filed: September 18,1997
Attorney Docket No. 60/259-001

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

This is a decision on the electronic petition, filed June 9,2008 ,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 9,2008 . 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)
6027026	2000-02-22	08933071	1997-09-18	0701082-011

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)

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	Fee	Code		Fee	Code
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○	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	/mark david torche/	Date (YYYY-MM-DD)	2008-06-09
Name	Mark David Torche	Registration Number	45823

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.

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)
5,902,749	1999-05-11	08933175	1997-09-18	P09541US00/RFH

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	/ROSS F. HUNT, JR./	Date (YYYY-MM-DD)	2008-08-04
Name	Ross F. Hunt, Jr.	Registration Number	24082

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:

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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. 5902749
Issue Date: May 11,1999
Application No. 08933175
Filed: September 18,1997
Attorney Docket No. REC3601

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

This is a decision on the electronic petition, filed August 4,2008 ,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 August 4,2008 . 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)
6222619	2001-04-24	08933203	1997-09-18	21101.0113U1

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 A. Cornett/	Date (YYYY-MM-DD)	2009-09-09
Name	David A. Cornett	Registration Number	48417

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.

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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. 6222619
Issue Date: April 24,2001
Application No. 08933203
Filed: September 18,1997
Attorney Docket No. 21101.0113U1

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

This is a decision on the electronic petition, filed September 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 September 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

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

FEB 11 2003

Mailed:

YNG
Paper Number 22

In re application of :
Charles E. Bowers
Serial No. 08/933,822:
Filed: September 19, 1997:

: DECISION ON
: PETITION

For: YARN WITH HEAT-ACTIVATED BINDER MATERIAL AND PROCESS FOR MAKING

This is a decision on applicant's PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181 filed on June 17, 2002, requesting withdrawal of the holding of the abandonment set forth in the Notice of Abandonment of June 4, 2002. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 4, 2000, be withdrawn since the applicant's did timely file a response on April 1, 2002. It is noted that the originally filed response has not been matched with the USPTO application.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's response was properly filed on April 1, 2002, as evidenced by the attached Exhibit (express mail receipt of United States Postal Service). The petitioner states that on April 1, 2002, the undersigned attorney timely filed Notice of Appeal with the two months of extension of time in response to the Office letter mailed October 31, 2001. The petitioner further states that copies of all papers filed on April 1, 2002, are attached here with this request, which includes a copy of Certificate of Mailing to the USPTO on April 1, 2002, and authorization to charge Deposit Account 01-1125, $400.00 for two month extension of time and copy of the Notice of Appeal. Accordingly, any holding of abandonment for failure to timely file a response to the Office letter mailed October 31, 2001, is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the Examiner for entry and consideration of the papers filed on April 1, 2002.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

HONEYWELL INTERNATIONAL INC.
15801 WOODS EDGE ROAD
COLONIAL HEIGHTS, VA 23834

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. 6151320
Issue Date: November 21,2000
Application No. 08933909
Filed: September 23,1997
Attorney Docket No. 1266P

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

This is a decision on the electronic petition, filed January 15,2009 ,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 January 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 10-08-09

TO SPE OF : ART UNIT 1638

08/934,254

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/934254 Patent No.: 6355861

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Angela Green 703-756-1541
Certificates of Correction Branch
703-756-1814

Thank You For Your Assistance

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

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

Comments: The amendment is denied entry given that serial number 08/366,799 did not have a claim to priority in this case, There is no error.

EM

SPE 1638 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

Date :December 11, 2010

Patent No. :6355861
Inventor :Terry L. Thomas
Issued :March 12, 2002
Title :PRODUCTION OF GAMMA LINOLENIC ACID BY A Δ6-DESATURASE

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.

Inspection of the application for the patent reveals that in connection with Title Page, Item (60) continuing data correction request; the amendment requested is not warranted entry given the Serial No. 08/366799 did not have a claim to priority in the subject case Serial No. 08/934254. Accordingly, there being no fault on the part of the Patent and Trademark Office, it has no authority to a issue certificate of correction under the provisions of 35 U.S.C. 254 and Rule 322 and 323 of the Rules of Practice of the United States Patent and Trademark Office in Patent Cases.

In view of the foregoing applicants request in this matter is hereby denied. Any telephone inquiry concerning this communication should be directed to Ms. A. Green at (703) 756-1541.

Mary Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 756-1580 or (703) 756-1541

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Ste 300
Garden City, NY 11530

/arg

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

A-S

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/934,396	09/19/97	ARAKI	S 046849

IM22/0217

SUGHRUE, MION, ZINN, MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON DC 20037-3202

EXAMINER	
ZITOMER,F	
ART UNIT	**PAPER NUMBER**
1713	11

DATE MAILED: 02/17/00

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

Commissioner of Patents and Trademarks

1.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT COMMISSIONER FOR PATENTS
Washington, D.C. 20231

Paper No. 11

In re Application of Shunji Araki et al.
Appl. No.: 08/934,396
Filed: 09/19/1997
For: Rubber Composition And Pneumatic Tire Using Said Rubber Composition

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed Dec 27, 1999, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled Proprietary Information Disclosure Statement, filed October 1, 1998, 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(i) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

The expunged material is returned herewith.

FRED ZITOMER
PRIMARY EXAMINER
GROUP 1710

Zitomer/fz
February 16, 2000
Enclosure: Proprietary Information Disclosure Statement (Paper No. 4).

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. 27

MARIA MCCORMACK SOBRINO
BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD 7TH FLOOR
LOS ANGELES, CA 90025

COPY MAILED

MAY 0 3 2005

OFFICE OF PETITIONS

In re Application of :
D. Michael Bell :
Application No. 08/934,968 : ON PETITION
Filed: September 22, 1997 :
Attorney Docket No. 42390P4925 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 8, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Drawing Inconsistency with Specification (Notice) mailed April 1, 2004. The Notice set a period for reply of one (1) month or thirty (30) days (whichever is later). Accordingly, the above-identified application became abandoned on May 2, 2004.

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

The application file is being forwarded to Technology Center AU 2181 for consideration of the amendment filed April 8, 2005.

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)
5980242	1999-11-09	08935078	1997-09-25	03-09-2128

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	/R. Joseph Trojan/	Date (YYYY-MM-DD)	2008-11-03
Name	R. Joseph Trojan	Registration Number	34264

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. 5980242
Issue Date: November 9,1999
Application No. 08935078
Filed: September 25,1997
Attorney Docket No. 2560

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

This is a decision on the electronic petition, filed November 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 November 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 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.

DO NOT SEND TO WAREHOUSE

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 12/26/00 **Paper No.:** 17

TO : **Supervisor, Art Unit** 1612

SUBJECT : Certificate of Correction Request in Patent No.: 6174905

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. Col. 78, Line 48

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:** OK to put $ before ppm. RD. 12/27/00

ALAN L. ROTMAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

ALR — **Supervisor**

1625 — **Art Unit**

The opinion in support of the petition decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE

MAILED
JUL 07 2005
U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

DAVID W. DEATON and ROBERT SCOTT WOOD

Appeal No. 2004-0786
Application No. 08/935,116

DECISION ON PETITION

This is a decision on the petition filed January 3, 2005 under 37 CFR § 1.182 or alternatively under 37 CFR § 1.183 to have a decision of a panel of the Board of Patent Appeals and Interferences formally revised to clarify that the panel entered a new ground of rejection instead of an affirmance of the examiner's ground of rejection.

Pursuant to 37 CFR § 1.181(g) and 37 CFR § 41.3, the Director has delegated authority to decide petitions under 37 CFR §§ 1.182, and 1.183 from actions of the Board of Patent Appeals and Interferences or of personnel at the Board of Patent Appeals and Interferences to the Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences. MPEP § 1002.02(f)(4)(b).

The petition under 37 CFR § 1.182 is DISMISSED.

The petition under 37 CFR § 1.183 is DENIED.

FINDINGS

1. On September 9, 2004, a merits panel composed of three administrative patent judges of the Board of Patent Appeals and Interferences, 35 U.S.C. § 6(b), entered a decision (BPAI Decision) affirming the decision of the examiner to reject claims 17-32 under 35 U.S.C. § 103(a); reversing the decisions of the examiner rejecting claims 8-16 and 33-39; and entered a new ground of rejection against claim 33.

2. The appellants did not file a request for rehearing within two months of the date of the BPAI decision as permitted by either 37 CFR § 1.197 (effective until September 13, 2004) or 37 CFR § 41.52 (effective from September 13, 2004).

3. 37 CFR § 41.52 reads as follows:

> § 41.52 Rehearing.
> (a)(1) Appellant may file a single request for rehearing within two months of the date of the original decision of the Board. No request for rehearing from a decision on rehearing will be permitted, unless the rehearing decision so modified the original decision as to become, in effect, a new decision, and the Board states that a second request for rehearing would be permitted. The request for rehearing must state with particularity the points believed to have been misapprehended or overlooked by the Board. Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section. When a request for rehearing is made, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing, and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing.
> (2) Upon a showing of good cause, appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.
> (3) New arguments responding to a new ground of rejection made pursuant to §41.50(b) are permitted.

> (b) Extensions of time under §1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See §1.136(b) of this title for extensions of time to reply for patent applications and §1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

4. On January 3, 2005, Petitioners David W. Deaton and Robert Scott Wood (Petitioners) filed the instant petition under 37 CFR § 1.182 or alternatively under 37 CFR § 1.183 to have the BPAI decision formally revised to clarify that the panel entered a new ground of rejection instead of an affirmance of the examiner's ground of rejection. Specifically, Petitioner seeks to have the "rejection under 35 USC 103 of claims 17-32 based upon Creekmore and Bigari, not an affirmance of the grounds of rejections asserted by the examiner of claims 17-32 under 35 USC 103 based upon Creekmore, Off, Tai, and Bigari, and provide the applicant two months from the date of the decision on this petition to act, pursuant to 37 CFR 41.50(b)" (Petition, page 2). That is, Petitioners seek the designation of the affirmance of this rejection to constitute a new ground of rejection.

5. The petition filed on January 3, 2005 is more than two months from the date of the BPAI decision.

6. 37 CFR §§ 1.181-1.183 read as follows:

> § 1.181 Petition to the Director.
> (a) Petition may be taken to the Director:
> (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 or reviewed by the Director; and
> (3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.
> (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 Director 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 Director 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 Director.
(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 Director may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

§ 1.182 Questions not specifically provided for.
All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in §1.17(f).

§ 1.183 Suspension of rules.
In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in §1.17(f).

7. 37 CFR § 41.3 reads as follow:

> § 41.3 Petitions.
> (a) Deciding official. Petitions must be addressed to the Chief Administrative Patent Judge. A panel or an administrative patent judge may certify a question of policy to the Chief Administrative Patent Judge for decision. The Chief Administrative Patent Judge may delegate authority to decide petitions.
> (b) Scope. This section covers petitions on matters pending before the Board (§§41.35, 41.64, 41.103, and 41.205); otherwise, see §§1.181 to 1.183 of this title. The following matters are not subject to petition:
> (1) Issues committed by statute to a panel, and
> (2) In pending contested cases, procedural issues. See §41.121(a)(3) and §41.125(c).
> (c) Petition fee. The fee set in §41.20(a) must accompany any petition under this section except no fee is required for a petition under this section seeking supervisory review.
> (d) Effect on proceeding. The filing of a petition does not stay the time for any other action in a Board proceeding.
> (e) Time for action. (1) Except as otherwise provided in this part or as the Board may authorize in writing, a party may:
> (i) File the petition within 14 days from the date of the action from which the party is requesting relief, and
> (ii) File any request for reconsideration of a petition decision within 14 days of the decision on petition or such other time as the Board may set.
> (2) A party may not file an opposition or a reply to a petition without Board authorization.

8. Petitioners raise the issue of the timeliness of the petition by stating that it is not time barred (Petition, page 10). In support of this position, Petitioners state:

> Since 37 CFR 1.182 does not provide a 2 month time limit, and this petition addresses an issue not specifically provided for, the petition should not be dismissed. Cf. Helfgott & Karas, P.C. v. Dickenson, 209 F.3d 1328, n.3; 2000 U.S. App. LEXIS 6922, n.3; 54 USPQ2d 1425, n.3 (Fed. Cir. 2000)("Because Helfgott does not appeal the district court's holding that the Commissioner properly applied the two month time period in section 1.181 to a section 1.182 petition, see Helfgott & Karas, 47 F. Supp. 2d at 433 n.5, we cannot reach this issue and rule in Helfgott's favor--even though the time limit in section 1.181 seems by the plain meaning of the section to apply only to that section. We can note, however, that the Commissioner's rejection of the section 1.182 petition for untimeliness necessitated the further expenditure of private and public

> resources, as Helfgott pursued its request for relief and the Commissioner steadfastly refused to permit correction of the evident errors attributable to both parties.")

9. 37 CFR § 1.181(f) was amended effective November 7, 2000 to clarify that the two-month time period applies to any petition filed under this part (i.e., 37 CFR part 1), except as otherwise provided. The pertinent portion of the rulemaking (65 Fed. Reg. 54646) reads as follows:

> The Office has long considered the two-month period in § 1.181(f) to be the benchmark for determining the timeliness of petitions. *See Changes to Patent Practice and Procedure, 62 FR at 53161, 1203 Off. Gaz. Pat. Office* at 88 (the Office considers the two-month period in § 1.181(f) to be the appropriate period by which the timeliness of a petition should be determined). Nevertheless, there appears to be some confusion as to when other petitions (e.g., §§ 1.182 and 1.183) must be **filed** to be timely, or even whether there is any period within which other petitions must be **filed** to be timely. *See Helfgott v. Dickinson*, 209 F.3d 1328, 1333 n.3, 54 USPQ2d 1425, 1428 n.3 (Fed. Cir. 2000).
>
> Therefore, the Office is revising § 1.181(f) to clarify that its two-month time period applies to any petition under 37 CFR part 1, except as otherwise provided. (Emphasis added.) Section 1.181(f) is also amended to provide that this two-month period is not extendable. A number of sections (e.g., §§ 1.377, 1.378, 1.644, 1.740) specify the time period within which a petition must be **filed** (or may be dismissed as untimely). The two-month time period in § 1.181(f) applies to a petition under any section that does not specify the time period within which a petition must be **filed**. (Emphasis added).

10. Petitioners further argue (Petition, page 10) that

> Alternatively, you should deem this petition to request relief where justice demands, as a petition under 37 CFR 1.183. You should grant the relief requested because justice requires a fair decision on the issue of whether the panel's Creekmore/Bigari combination in fact suggests any claim, and rights will otherwise be lost due to issue preclusion. In this regard, the ambiguity caused by the panel's alleged affirmance of

> the examiner coupled with their express new ground of rejection of claim 33 is sufficient reason to grant the relief requested in order to avoid preclusion of the issue of the Creekmore/Bigari based panel rejections of claims 17-32.

11. Petitioners have not provided any explanation as to why the petition or a request for rehearing under 37 CFR § 41.52[1] was not filed within two months of the date of the BPAI decision.

DISCUSSION

The petition under 37 CFR § 1.182 is dismissed as untimely.

Petitioners do not dispute that the petition under 37 CFR § 1.182 was filed after that the two-month period set under 37 CFR §1.181(f). What is disputed is whether or not a petition under 37 CFR § 1.182 is subject to the two-month time period specified in 37 CFR §1.181(f). See Finding No. 8.

As indicated above, the change to 37 CFR § 1.181(f), effective November 7, 2000, makes clear that the two-month time period applies to a petition filed under 37 CFR § 1.182. The literal language of the rule provides notice that the two-month time period set forth in 37 CFR §1.181(f) applies "to any petition under 37 CFR part 1, except as otherwise provided," including 37 CFR § 1.182. See Finding No. 9.

The petition under 37 CFR § 1.182 was filed after the two-month period set under 37 CFR §1.181(f). See Finding No. 5. Thus, it is untimely in accordance with 37 CFR §1.181(f). See Finding No. 9.

---

[1] A request for rehearing can include a request that an affirmance of the examiner's ground of rejection be designated a new ground of rejection since such a request relates to a procedural aspect of the decision, not to the merits of the decision to affirm the rejection.

The alternative petition under 37 CFR § 1.183 is denied.

37 CFR § 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee on petition of the interested party, subject to such other requirements as may be imposed. See Finding No. 6.

Petitioners have not provided any explanation as to why the petition was not filed within two months of the date of the BPAI decision. See Finding No. 11. Thus, the petitioners have not set forth an extraordinary situation, where justice requires, the two-month period set in 37 CFR §1.181(f) be suspended or waived.

The petition under 37 CFR § 1.182 is DISMISSED as untimely.

The petition under 37 CFR § 1.183 is DENIED.

Michael R Fleming

Michael Fleming
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA , VA 22304

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/935,116	09/22/1997	DAVID W. DEATON	DEATON-18-USC1	8230

31518 7590 09/10/2008

NEIFELD IP LAW, PC
4813-B EISENHOWER AVENUE
ALEXANDRIA, VA 22304

EXAMINER	
ALVAREZ, RAQUEL	

ART UNIT	PAPER NUMBER
3688	

NOTIFICATION DATE	DELIVERY MODE
09/10/2008	ELECTRONIC

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

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

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

general@neifeld.com
rneifeld@neifeld.com
rhahl@neifeld.com

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FROM DIRECTORS OFFICE

SEP 0 8 2006

TECHNOLOGY CENTER 3600

Richard A. Neifeld
NEIFELD IP LAW, PC
4813-B Eisenhower Avenue
Alexandria, VA 22304

In re Application of :
David W. Deaton et al : DECISION ON PETITION
Application No. 08/935,116 : REGARDING RESTRICTION
Filed: September 22, 1997 : REQUIREMENT
Attorney Docket No.: DEATON-18-USC1 :
For: SYSTEM, METHOD, AND DATABASE :
FOR PROCESSING TRANSACTIONS

Applicants' petition filed on April 28, 2006 requests withdrawal of the election requirement as set forth in the Office action mailed March 13, 2005 and thereafter made final in the Office action mailed October 17, 2005. Applicants further request an examination on the merits of all pending claims.

The petition is **GRANTED**.

A review of the record reveals that the Office action mailed March 13, 2005 set forth an election requirement requiring a provisional election between two subcombinations identified as (1) Claims 8-16, and (2) Claims 17-76. Applicants elected the subcombination of Claims 8-16 with traverse in the response filed May 18, 2005. The examiner, upon reconsideration, adhered to the election requirement and made the election requirement final. This petition was then timely filed.

Applicants' petition alleges that the election requirement is improper because there would be no burden on the examiner to search for prior art teaching of storing customer dollar amount. After reviewing the two groups, it has been found that both groups receive the identification of the customer, access data pertaining to the customer in a prior shopping history database, and provide at a POS terminal information derived from the data in the prior shopping history database. The only difference between the two groups is that the second group specifically identifies the retrieved information as being the dollar amount of a previous purchase, while the first group does not specify the specific type of information being retrieved from the database. However, since a database of prior purchases would implicitly include the dollar amount of the purchases, it is not deemed to be a significant burden on the examiner to examine the second group. This is apparent in that there is no reason why such a narrowing of the claimed retrieved information to the dollar amount could not have been entered as a dependent feature in the first group.

For the foregoing reasons, the examiner's provisional election requirement is improper.

The Examiner's Answer mailed December 12, 2006 is hereby vacated. The application is being forwarded to the examiner for consideration of claims 17-76. An appropriate Office response will follow in due course.

Wynn Coggins, Director
Technology Center 3600
(571) 272-5350

JWM: 7/8/08

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JAN 2 8 2010

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ALEXANDRIA VA 22304

In re Application of	:	
David W. Deaton	:	
Application No. 08/935,116	:	DECISION ON PETITION
Filed: September 22, 1997	:	TO WITHDRAW
For: SYSTEM, METHOD, AND DATABASE	:	RESTRICTION REQUIREMENT
FOR PROCESSING TRANSACTIONS	:	UNDER 37 CFR 1.181

This is in response to applicant's petition under 37 CFR 1.181 filed May 19, 2005 requesting that the restriction requirement be withdrawn and to have withdrawn claims 17-76 reinstated.

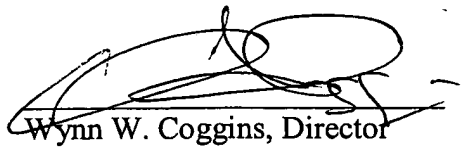
The petition is **DISMISSED AS MOOT**.

A review of the record reveals that following the decision by the Board of Patent Appeals and Interferences (BPAI) affirming in part the examiner's rejections, the examiner issued an Office action on May 13, 2005 requiring a provisional election between claims 8-16 and claims 17-76. Applicants elected claims 8-16 with traverse in a response filed May 18, 2005. The examiner adhered to the restriction requirement and made it final. Applicant timely filed a petition on May 19, 2005 to withdraw the restriction requirement and to reinstate claims 17-76. This petition of May 19, 2005 was followed by a second petition, filed April 28, 2006, similarly requesting that the restriction requirement be withdrawn and the currently withdrawn claims be reinstated.

In the petition decision mailed September 10, 2008, the petition of April 28, 2006 was granted. The restriction requirement was deemed improper and claims 17-76 were reinstated. Although the decision of September 10, 2008 did not specifically reference the petition of May 19, 2005, by reinstating the withdrawn claims at issue in both petitions, the petition decision of September 10, 2008 effectively provided the relief sought in the petition of May 18, 2005.

In view of the above, applicant's petition of May 19, 2005 is moot and is hereby dismissed.

Any questions regarding this decision should be directed to Supervisory Patent Examiner Robert Weinhardt at (571) 272-6633.



Wynn W. Coggins, Director
Patent Technology Center 3600
(571) 272-5350

rw/lm: 1/22/10

LM

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 10/25/04 **Paper No.:** _____

TO SPE OF : ART UNIT 1700

SUBJECT : Request for Certificate of Correction on Patent No.: 6740237 B1

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.

Virginia Tolbert

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:

_____

_____

_____

_____

_____

Walker — **SPE**

1723 — **Art Unit**

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

EMC CORPORATION
OFFICE OF THE GENERAL COUNSEL
176 SOUTH STREET
HOPKINTON, MA 01748

Mail Date: 04/23/2010

Applicant	: ROBERT WILSON	: DECISION ON REQUEST FOR
Patent Number	: 7647460	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 08/935,844	: OF WYETH
Filed	: 09/23/1997	:
		:

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.

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 Oct-06

MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK NY 10281-2101

COPY MAILED

OCT 0 5 2006

OFFICE OF PETITIONS

In re Application of	:	
Nozomu Kitagishi	:	DECISION ON PETITION
Application No. 08/936,182	:	TO WITHDRAW HOLDING OF
Filed: 24 September, 1997	:	ABANDONMENT
Atty. Docket No. 1232-4046US2	:	

This is a decision on the petition, filed on 11 July, 2006 (postcard date 8 September, 2005), to withdraw the holding of abandonment in the above-identified application.

The application was held abandoned for failure to timely submit corrected drawings as required by the Notice of Allowability mailed on 12 August, 2003, which set a three (3) month statuory period for reply. A Notice of Abandonment was mailed on 2 January, 2004.

Petitioner asserts that corrected drawings were in fact timely filed. In support of the petition, petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of, *inter alia*, "Formal Drawings 1-19" in the United States Patent and Trademark Office (Office) on 17 November, 2003. Additionally, petitioner has submitted a copy of 17 sheets of drawings containing Figures 1-19. The petitioner has also submitted a paper itemizing the filing of the above-referenced drawings and containing a Certificate of Mailing dated 12 Noveber, 2003, signed by petitioner's registered patent attorney, David V. Rossi.

The corrected drawings are not of record in the 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 PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the reply to the

Notice of Allowability was received in the Office but was not matched with the application file.
The date stamped on the post card of 17 November, 2003, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

As petitioner has provided convincing evidence that a reply to the non-final Office action mailed on 12 August, 2003, was filed with a certificate of mailing dated 12 November, 2003, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The holding of abandonment is withdrawn, and the Notice of Abandonment is vacated.

The application file will be referred to the Technology Center's technical support staff for review of the amendment filed under 37 CFR 1.312 with the present petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

RECEIVED BY THE EXAMINER ON 7/13/2007 RDS.

Paper No.: N/A

DATE : April 22, 2007

TO SPE OF : ART UNIT 2872

08/936182

SUBJECT : Request for Certificate of Correction on Patent No.: 7190519 B1

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.

Elisha Evans
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 110

Thank You For Your Assistance

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

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

Comments: THE CORRECTIONS "LINED THROUGH" OF APPLICANT'S CERTIFICATE OF CORRECTION, FILED ON 4/19/2007, WILL NOT BE ENTERED DUE TO THE FACT THAT SUCH CORRECTIONS ARE MORE THAN MINOR CLERICAL OR TYPOGRAPHICAL CHANGES WHICH AFFECT THE SCOPE OF THE CLAIMS AND PATENT. (SEE THE MARKED-UP COPY OF APPLICANT'S CORRECTED REQUEST FOR CERTIFICATE OF CORRECTION OF PATENT, FILED ON APRIL 19, 2007 ATTACHED HERETO.)

Randy D. Shaft
7/18/2007

Stephone B. Allen
Supervisory Patent Examiner

Stephone B. Allen
SPE

2872
Art Unit

PTO/SB/44 (07-03)
Approved for use through 01/31/2004. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NUMBER : 7,190,519 B1
DATED : March 13, 2007
INVENTOR(S) : Kitagishi

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

In the Specification:

In col. 2, line 33, please replace "lights" with --light--. O.K. ROS

In the Claim:

In claim 3 (col. 13, line 53), please replace "a polarized" with --polarized--. O.K. ROS

~~In claim 7 (col. 14, line 1), please replace "polarizing" with --polarization--.~~ NO ROS

~~In claim 7 (col. 14, line 2), please replace "is formed" with --is intermittently formed--.~~ NO ROS

~~In claim 7 (col. 14, line 3), please delete "all of".~~ NO ROS

In claim 7 (col. 14, line 4), please replace "other" with --other surface--. OK. ROS

~~In claim 11 (col. 14, line 18), please replace "for modulating" with --that modulates--.~~ NO ROS

~~In claim 13 (col. 14, lines 26-27), please delete "intermittently".~~ NO ROS

~~In claim 13 (col. 14, line 27), please replace "on said" with --on all of said--.~~ NO ROS

MAILING ADDRESS OF SENDER: Morgan & Finnegan, LLP
3 World Financial Center
New York, NY 10281-2101

PATENT NO. 7,190,519 B1
No. of additional copies
⇒ 0

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/44 (07-03)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NUMBER : 7,190,519 B1
DATED : March 13, 2007
INVENTOR(S) : Kitagishi

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

(Continued)

In the Claim:

~~In claim 19 (col. 14, line 47-50), please replace the entire text beginning from "A polarization" to "surface" with the following claim:~~ NO ROS

~~"A polarizing changing unit according to claim 1, where in said polarizing beam splitting portion is formed on all of said one surface and said reflecting portion is intermittently formed on said the other surface."~~. NO ROS

~~In claim 21 (col. 14, line 57), please replace "that modulates" with --for modulating--~~. NO ROS

In claim 22 (col. 14, line 61), please delete "generator". O.K ROS

~~In claim 23 (col. 14, line 65), please replace "that modulates" with --for modulating--~~.

In claim 24 (col. 15, line 3), please delete "generator". O.K. ROS

~~In claim 27, (col. 15, line 35), please replace "26" with --25--~~. NO ROS

~~In claim 27 (col. 15, line 36), please replace "for modulating" with --that modulates--~~. NO ROS

MAILING ADDRESS OF SENDER: Morgan & Finnegan, LLP
3 World Financial Center
New York, NY 10281-2101

PATENT NO. 7,190,519 B1

No. of additional copies
⇒ 0

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

PTO/SB/44 (07-03)
Approved for use through 01/31/2004. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NUMBER	:	7,190,519 B1
DATED	:	March 13, 2007
INVENTOR(S)	:	Kitagishi

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

(Continued)

In the Claim:

In claim 33 (col. 16, line 15), please replace "a polarized" with --polarized--. O.K. ROS

In claim 35 (col. 16, line 24), please replace "a polarized" with --polarized--. O.K. ROS

In claim 37 (col. 16, line 31), please replace "wave length" with --wavelength--. O.K. ROS

In claim 45 (col. 16, line 61), please replace "a polarized" with --polarized--. O.K. ROS

In claim 45 (col. 16, line 62), please replace "of said" with --said--. O.K. ROS

In claim 46 (col. 16, line 67), please replace "crystal" with --crystal panel--. O.K. ROS

In claim 47 (col. 17, line 4), please delete "polarizing device". O.K. ROS

MAILING ADDRESS OF SENDER: Morgan & Finnegan, LLP
3 World Financial Center
New York, NY 10281-2101

PATENT NO. 7,190,519 B1

No. of additional copies
⇒ 0

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 28

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

JUL 3 2003

In re Application of)
Dawei Dong)
Application No. 08/936,304)
Filed: September 24, 1977) DECISION ON PETITION
For: LASER LEVEL)

This is a decision on the petition filed May 8, 2003, to withdraw the holding of abandonment of the above-identified application.

The petition is GRANTED.

This application was held abandoned for failure to file an appeal brief in a timely manner. A Notice of Abandonment was mailed on April 14, 2003.

Petitioner states that the appeal brief was timely filed on September 25, 2002 having a certificate of mailing dated September 23, 2002. To support this assertion, petitioner has submitted a copy of the Notice of Appeal which was filed on July 30, 2002, having a certificate of mailing dated July 23, 2002 and a copy of the postcard receipt which acknowledges receipt of the Notice of Appeal. In addition, petitioner has submitted a copy of the appeal brief and a copy of a return postcard receipt which acknowledges receipt of the appeal brief.

The review of the application file reveals that the appeal brief was received and match therewith. However, the appeal brief was not noticed by the examiner and the technical support staff and not entered until after the mailing of the notice of abandonment. Consequently, the appeal brief was not timely entered in the file. The application is not abandoned in fact.

For above stated reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. Inconvenience to petitioner is regretted.

The application file is being returned to the examiner for further prosecution.

Jose' G. Dees, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components
(703) 308-4628

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. 6003387
Issue Date: December 21,1999
Application No. 08936503
Filed: September 24,1997
Attorney Docket No. 97CR095-KE

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

This is a decision on the electronic petition, filed March 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 March 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 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)
6003387	1999-12-21	08936503	1997-09-24	97CR095/KE

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	//keppele//	Date (YYYY-MM-DD)	2008-03-11
Name	Kyle Eppele	Registration Number	34155

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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 29

Song K. Jung
LONG ALDRIDGE & NORMAN, LLP
Sixth Floor
701 Pennsylvania Avenue, NW
Washington, DC 20004

29/Ref to Restart
Granted
JMacaleese
3/20/02

MAR 20 2002

In re Application of	)
KIM	)
Application No. 08/936,510	) DECISION ON PETITION TO
Filed: September 24, 1997	) RESET PERIOD FOR REPLY
For: Reflective-type Liquid Crystal Display Device and Method for Making the Same	)

This is a decision on the petition filed on January 29, 2002, requesting that the shortened statutory period for reply set forth in the Office communication mailed on December 3, 2001, be reset to run from the date on which the Office communication was actually received at the correspondence address of record.

The petition is **granted**.

Petitioner has provided a statement that the Office action in question was received at the correspondence address on January 17, 2002. The petition was filed within two weeks of the date of receipt of the Office communication. A substantial portion of the set reply period had elapsed on the date of receipt. Furthermore, the Office communication was mailed between October 13, 2001 and January 2, 2002, when delivery of mail from the Office to certain regions of the country was delayed.

Accordingly, the shortened statutory period that was originally set forth in the Office action originally mailed on December 3, 2001, is hereby reset to run FROM THE RECEIPT DATE OF January 17, 2002.

The application file is being forwarded to the Central Files of Technology Center 2800 to await a response to the Office communication. No fee is required for the petition.

Edward Glick, Special Program Examiner
Technology Center 2800 - Semiconductors, Electrical and Optical Systems and Components
(703) 308-4858

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MAR 20 2002

TECHNOLOGY CENTER 2800
SPECIAL PROGRAM CENTER

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Paper No. 23

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FIRST INTERSTATE WORLD CENTER
633 WEST FIFTH STREET
SUITE 4700
LOS ANGELES, CA 90071

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AUG 15 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of
Fritz Eckstein et al.
Application No. 08/936,657
Filed: September 24, 1997
Attorney Docket No. 228/213

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 7, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed August 16, 1999, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). Since the reply submitted on January 19, 2000 does not *prima facie* placing the application in condition for allowance, no Notice of Appeal (and appeal fee) was timely filed. Extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 20, 2000.

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.

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.

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.

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 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 Assistant Commissioner
for Patent Policy and Projects

cc: BROBECK PHLEGER & HARRISON
12390 EL CAMINO REAL
SAN DIEGO, CA 92130

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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DOUGLAS M. GILBERT
HEWLETT-PACKARD CO.
19111 PRUNERDIGE AVENUE
MSC 4059
CUPERTINO, CA 95014

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,029,330 :
Issue Date: February 29, 2000 :
Application No. 08/936,976 :
Filed: September 25, 1997 :
Attorney Docket No. 10961253-1 :

This is a decision on the petition under 37 CFR 1.378(c), filed May 21, 2008, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on March 1, 2008 for failure to pay the 7 ½ 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.

Telephone inquiries concerning this decision should be directed to Phyllis Spivack at (571) 272-6052 or in her absence, the undersigned at 571-272-7099.

The patent file is being forwarded to Files Repository.

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6160999
Issue Date: December 12,2000
Application No. 08937305
Filed: August 18,1997
Attorney Docket No. RR2084

:
: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 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 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)
6,160,999	2000-12-12	08/937,305	1997-08-18	22493-154

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	/Jean-Pierre FORTIN/	Date (YYYY-MM-DD)	2009-11-20
Name	Jean-Pierre FORTIN		
Enter Reel and Frame Number		Remove	
Reel Number	009012	Frame Number	0195
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	

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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In re Patent No. 6186507
Issue Date: February 13,2001
Application No. 08937427
Filed: September 25,1997
Attorney Docket No. 97-0022

:
: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 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 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.

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)
6186507	2001-02-13	08937427	1997-09-25	97-0022

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	/Ronald W. Wangerow/	Date (YYYY-MM-DD)	2009-06-03
Name	Ronald W. Wangerow	Registration Number	29597

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
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Paper No. 25

MINTZ, LEVIN
ONE FINANCIAL CENTER
BOSTON, MA 02111

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OFFICE OF PETITIONS
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In re Application of
Rueger et al.
Application No. 08/937,756
Filed: September 25, 1997
Attorney Docket No. 00960-504 FWCCON2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on June 29, 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 mailing date of this decision.[1] Extensions of time under 37 CFR 1.136(a) are permitted.

This application became abandoned on March 27, 2001 for failure to timely submit a proper reply to the final Office Action, mailed on September 25, 2000, which set a shortened statutory period of 3 months for reply.[2] On March 26, 2001, a proposed amendment accompanied by a 3-month extension of time was filed. In an Advisory Action mailed on June 6, 2001, the Examiner indicated that the March 26, 2001 proposed amendment was not entered because it did not place the application in condition for allowance. A Notice of Abandonment was mailed on June 19, 2001.

The instant petition contains a proposed amendment in reply to the September 25, 2000 final Office Action. This proposed amendment, upon review by the Examiner, was again determined to not place the application in condition for allowance and was denied entry.

A **grantable** petition under 37 CFR 1.137(b)[3] must be accompanied by: (1) **the required reply to the outstanding Office action or notice, unless previously filed**;[4] (2) the petition fee as set forth

---

[1] Such a renewed petition does not require a petition fee.

[2] Without extensions, the reply would have been due on 12/26/00 because 12/25/00 is a Federal holiday; see 37 CFR 1.7. A 3-month extension extended the reply period to 3/26/01; see *infra*.

[3] 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).

[4] **The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed** (emphasis added); see MPEP 711.03(c)(III)(A). (Rev. 1, Feb. 2000)

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). **A required reply to a final Office action**, as is in the instant case, **must be a notice of appeal, the filing of a continuing application, a request for continued examination (RCE), or proper amendment, i.e., an amendment that *prima facie* places the application in condition for allowance**.[5]

The instant petition does not comply with 37 CFR 1.137(b)(1) in that it is not accompanied by a notice of appeal, the filing of a continuing application, an RCE, or a proper amendment. Consequently, the petition is not granted.

The Office acknowledges receipt of the $620 petition fee (small entity).

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 CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.

K. McFarquhar

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[5] No claims stand allowed under the 9/25/00 final Office Action. Otherwise, an amendment canceling all the rejected claims would also be a form of proper reply. See MPEP 711.03(c)(III)(A)(2) (Rev. 1, Feb. 2000).

IRE

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MINTZ, LEVIN
ONE FINANCIAL CENTER
BOSTON, MA 02111

In re Application of
Rueger et al.
Application No. 08/937,756
Filed: September 25, 1997
Attorney Docket No. 00960-504 FWCCON2

Transferred to Ropes & Gray

ON PETITION

Rec'd NOV 2 (mg)

This is a decision on the petition under 37 CFR 1.137(b), filed on June 29, 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 mailing date of this decision.[1] Extensions of time under 37 CFR 1.136(a) are permitted.

This application became abandoned on March 27, 2001 for failure to timely submit a proper reply to the final Office Action, mailed on September 25, 2000, which set a shortened statutory period of 3 months for reply.[2] On March 26, 2001, a proposed amendment accompanied by a 3-month extension of time was filed. In an Advisory Action mailed on June 6, 2001, the Examiner indicated that the March 26, 2001 proposed amendment was not entered because it did not place the application in condition for allowance. A Notice of Abandonment was mailed on June 19, 2001.

The instant petition contains a proposed amendment in reply to the September 25, 2000 final Office Action. This proposed amendment, upon review by the Examiner, was again determined to not place the application in condition for allowance and was denied entry.

A **grantable** petition under 37 CFR 1.137(b)[3] must be accompanied by: (1) **the required reply to the outstanding Office action or notice, unless previously filed**;[4] (2) the petition fee as set forth

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1 Such a renewed petition does not require a petition fee.

2 Without extensions, the reply would have been due on 12/26/00 because 12/25/00 is a Federal holiday; see 37 CFR 1.7. A 3-month extension extended the reply period to 3/26/01; see *infra*.

3 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).

4 **The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed** (emphasis added); see MPEP 711.03(c)(III)(A). (Rev. 1, Feb. 2000)

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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). **A required reply to a final Office action, as is in the instant case, must be a notice of appeal, the filing of a continuing application, a request for continued examination (RCE), or proper amendment, i.e., an amendment that *prima facie* places the application in condition for allowance.**[5]

The instant petition does not comply with 37 CFR 1.137(b)(1) in that it is not accompanied by a notice of appeal, the filing of a continuing application, an RCE, or a proper amendment. Consequently, the petition is not granted.

The Office acknowledges receipt of the $620 petition fee (small entity).

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 CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.

K. McKay Fleming

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[5] No claims stand allowed under the 9/25/00 final Office Action. Otherwise, an amendment canceling all the rejected claims would also be a form of proper reply. See MPEP 711.03(c)(III)(A)(2) (Rev. 1. Feb. 2000).

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UNITED STATES PATENT AND TRADEMARK OFFICE,

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

Paper No. 32

MINTZ, LEVIN
ONE FINANCIAL CENTER
BOSTON, MA 02111

COPY MAILED

FEB 0 5 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of
Rueger et al.
Application No. 08/937,756
Filed: September 25, 1997
Attorney's Docket No. 00960-504 FWCCON2

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on January 10, 2002 (Certificate of Mailing date November 7, 2001),[1] to revive the above-identified application.

The petition is **GRANTED**.

A final Office Action was mailed on September 25, 2000. Applicants filed a proposed amendment on March 26, 2001 (Monday) along with a request for a 3-month extension of time. As indicated in the June 6, 2001 Advisory Action by the examiner, the proposed amendment did not place the application in condition for allowance and thus was not entered. Consequently, this application became abandoned on March 26, 2001[2] for failure to timely submit a proper reply to the September 25, 2000 final Office Action.

On June 29, 2001, Applicants filed a petition under 37 CFR 1.137(b) to revive this application, accompanied by a second proposed amendment which again was denied entry by the examiner because it did not place the application in condition for allowance. That petition was dismissed on August 7, 2001.[3]

The instant petition includes a Notice of Appeal as reply to the September 25, 2000 final Office Action,[4] a third proposed amendment, a request for a 1-month extension of time for filing these

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1 37 CFR 1.8(a)(1).

2 The 3-month extension of time extended the due date for the reply to 3/25/01, a Sunday. Under 37 CFR 1.7(a), a reply filed on 3/26/01, the following Monday, would have been considered timely. The 3/26/01 reply was considered "timely," but was not responsive to the 9/25/00 final Office Action. The application thus became abandoned as of 3/26/01. See 37 CFR 1.135; MPEP 711.04(a) (Aug. 2001): "[T]he date of abandonment is after midnight of the date on which the set shortened statutory period, including any [obtained] extensions under 37 CFR 1.136, expired." The 8/7/01 Decision (Paper No. 25) inadvertently indicated a date of abandonment of 3/27/01.

3 See Paper No. 25.

4 MPEP 711.03(c)(III)(A)(2)(b) (Aug. 2001).

items; and in effect states 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. In addition, the $320 fee for filing the Notice of Appeal and the $110 for the 1-month extension of time are enclosed.[5] The instant petition is thus granted.

Under 37 CFR 1.192, **Applicants must file an Appeal Brief within two (2) months from the mailing date of this decision** to avoid dismissal of the appeal, and consequently abandonment of this application since no claims stand allowed in this application.[6] This 2-month period is extendable under 37 CFR 1.136.[7]

Finally, a power of attorney[8] and a request to change the correspondence address for this application were filed on September 4, 2001 (9/4/01 submission") on behalf of a Curis, Inc., presumably the assignee of entire interest for this application. However, there is no assignee-of-record in the official records for this application; neither does the 9/4/01 submission provide the requisite information under 37 CFR 3.73 for establishing ownership of this application by Curis, Inc., and accordingly, right by Curis, Inc. to prosecute this application before the PTO.[9] The 9/4/01 submission is therefore not entered. While a courtesy copy of this decision is being mailed

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[5] A duplicate charge of $320 and a $920 for an additional 3-month extension of time were erroneously charged to Deposit Account No. 18-1945 on 1/11/02, and have been credited to the same account.

[6] See MPEP 710.02(d) (Aug. 2001).

[7] *Id.* (The 2-month non-statutory period is extendable for up to 5 months under 37 CFR 1.136(a), and is further extendable under 37 CFR 1.136(b) in exceptional situations.).

[8] General Revocation of Prior Powers of Attorney and Appointment of New Power of Attorney or Authorization of Agents.

[9] 37 CFR 3.71 ((a) [A]ssignees . . . may, **after becoming of record** . . . conduct prosecution of a . . . patent application . . . to the exclusion of either the inventive entity or [prior] assignee(s) . . . (c) An assignee **becomes of record** . . . by filing a statement in compliance with 37 CFR 3.73(b) that is signed by a party authorized to act on behalf of the assignee.).

37 CFR 3.73(b)(1) (In order to request or take action in a patent . . . matter, the assignee must establish its ownership of the [application] . . . by submitting a signed statement **identifying the assignee, . . . accompanied by . . . documentary evidence of a chain of title from the original owner to the assignee** . . .; or a statement specifying where documentary evidence of [such] a chain of title . . . is recorded in the PTO, e.g., reel and frame numbers of the recorded assignment . . .).

Also see MPEP 402.07 (Aug. 2001) (A power of attorney by the assignee of the entire interest revokes all powers given by the applicant and prior assignees **if the assignee establishes its right to take action as provided in 37 CFR 3.73(b)).**

to the practitioner signing the instant petition, all future correspondence on this application will be directed to the address currently of record unless the Office is properly instructed otherwise.[10]

The application is being forwarded to Technology Center 1600 to await submission of the appeal brief.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

RC Tang
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: William G. Gosz
Ropes & Gray
One International Place
Boston, MA 02110
(Attorney Docket No. CIBT-P06-504)

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[10] See 37 CFR 3.73 and MPEP 601.03 (Aug. 2001) for guidance. The new power of attorney and change of correspondence address may be filed along with the appeal brief.

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 20

PARSONS HSUE & DE RUNTZ LLP
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

COPY MAILED

APR 0 5 2004

OFFICE OF PETITIONS

In re Application of :
Tsyrganovick :
Application No. 08/937,877 : ON PETITION
Filed: September 29, 1997 :
Attorney Docket No. ZILG.183US0 :

This is a decision on the petition under 37 CFR 1.137(a), and in the alternative under 37 CFR 1.137(b), filed October 30, 2003, to revive the above-identified application. The petition is also being treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

The petition is under 37 CFR 1.181 is **granted.**

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 22, 2002, 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 was deemed abandoned on January 23, 2003. A Notice of Abandonment was mailed on October 2, 2003.

Petitioner contends the Office action was not received.

A review of the file history indicates that a request to change the correspondence address was received by the Office between February 21, 2002, and March 1, 2002. However, the paper was not matched with the file and the change in address was not made until *after* the Office action had been mailed. Therefore, the Office action was mailed to the wrong address and withdrawal of the holding of abandonment is proper.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, the petitioner's request to have the petition considered under 37 CFR 1.137 is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, a petition fee has not been charged to petitioner's deposit account.

The file is being forwarded to Technology Center 2600 for entry and consideration of the amendment filed on October 30, 2003.

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

Mail Date: 04/22/2010

Applicant	: HIEP V. TRAN	: DECISION ON REQUEST FOR
Patent Number	: 7576568	: RECALCULATION of PATENT
Issue Date	: 08/18/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 08/938,163	: OF WYETH
Filed	: 09/26/1997	:
		:

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 24

BECK & TYSVER, PLLP
1011 FIRST STREET SOUTH SUITE 440
HOPKINS, MN 55343

COPY MAILED

MAY 31 2001

OFFICE OF PETITIONS

In re Application of :
Brockhoff :
Application No. 08/938,173 : DECISION ON PETITION
Filed: September 26, 1997 :
Attorney Docket No: P61957 :

This is a decision on the petition under 37 CFR 1.137(b), filed January 29, 2001, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration 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.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on March 22, 2000. The final Office Action set a three (3) month shortened statutory period for reply. Petitioner submitted an amendment and a three month request for extension of time on September 25, 2000 with a mail date of September 20, 2000. An Advisory Action mailed October 11, 2000 informed Petitioner the amendment did not place the application in condition for allowance and as such would not be entered. Accordingly, this application became abandoned on September 22, 2000. A Notice of Abandonment was subsequently mailed on December 5, 2000.

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 intentional; 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 lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action 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, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114.

Petitioner's submission of the September 25, 2000 amendment as the required reply is improper. Petitioner was informed via the October 11, 2000 Advisory Action the September 25, 2000 amendment did not place the application in condition for allowance as such the amendment would not be entered. Accordingly, this application cannot be revived.

The application is being forwarded to the Office of Initial Patent Examination for issuance of a corrected filing receipt, correction of the file jacket, and the Office Palm data to reflect the inventorship as corrected. Thereafter, the application will be returned to the Office of Petitions to await petitioner's response to this decision.

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

By mail:	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 matter should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

for D Wood

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, DC 20231
www.uspto.gov

Paper No. 34

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BLVD
7TH FLOOR
LOS ANGELES CA 90025

MAIL

OCT 1 0 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Chen, Shenchang Eric :
Application No. 08/938,366 : DECISION ON REQUEST TO
Filed: September 26, 1997 : WITHDRAW AS ATTORNEY
For: VIRTUAL REALITY CAMERA :
:

This is a decision on the request to withdraw as attorney/agent of record filed on September 23, 2002.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All attorneys listed in the petition are removed from record. Stephen L. King, Ben Yorks, Aloysius Auyeung, Kimberley Nobles and Eric Ho remain active.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Albert S. Penilla, Esq.
Martine & Penilla, LLP
710 Lakeway Drive, Suite 170
Sunnyvale, CA 94085

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. 12

Honeywell International, Inc.
101 Columbia Road
P.O. Box 2245
Morristown, NJ 07962-2245

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MAY 24 2002

OFFICE OF PETITIONS

In re Application of :
Jason I. Glithero :
Application No. 08/939,050 : ON PETITION
Filed: September 26, 1997 :
Attorney Docket No. A61-16737-US :

This is a decision on the petition under 37 CFR 1.137(b), filed April 9, 2002, 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 June 2, 1999, 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 September 3, 1999.

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 above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the 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. 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 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office).

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Sherry Brinkley at (703)305-9220.

The application file is being forwarded to Technology Center 2700, Art Unit 2778.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Sherry Brinkley
Petitions Examiner

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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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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MAY 23 2006
OFFICE OF PETITIONS

In re Application of	:
Tognazzini	:
Application No. 08/940,020	: Decision on Petition for
Filing Date: September 27, 1997	: Patent Term Extension
Attorney Docket No.: 4173.0348	:
For: MAGNETORESISTANCE EFFECT	:
DEVICE HAVING HARD MAGNETIC	:
FILM STRUCTURAL BODY	:

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Application For Patent Term Extension under 37 CFR 1.705(b)," received on May 4, 2006.

The petition is GRANTED.

Petitioner notes that the Notice of Allowance dated February 9, 2006, in the above-identified application incorrectly stated that the patent term extension is 1,047 days. Petitioner states that applicant is entitled to 931 days of patent term extension, not the 1,047 days of extension as stated in the Notice of Allowance.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000

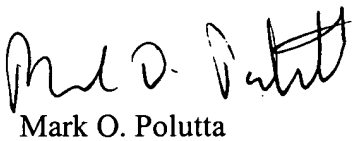
A Notice of Appeal was filed in the above-identified application on June 6, 2000. On April 18, 2003, the Board of Appeals and Interferences reversed the decision of the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an extension of the patent term. The period of delay in the above-identified application is the period beginning on June 6, 2000, the date that the Notice of Appeal was filed and ending on April 18, 2003, the date of the final decision in favor of the applicant. Three years after the

earliest effective filing date of the application is September 29, 2000. Accordingly, the period of extension is required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the first period of extension is **932 days**, the period from September 29, 2000 to April 18, 2003, including the beginning and end dates.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **932 days**

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* 35 U.S.C. § 41(a)(7). The Petition fee $200 for the petition under 37 CFR 1.705(b) is not required for this petition under 37 CFR 1.181 and the fee has been refunded to petitioner's Deposit Account (06-0916).

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HEWLETT PACKARD COMPANY
P.O. BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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JUN 18 2009

OFFICE OF PETITIONS

In re Application of :
Kevin J. Brusky, et. al. :
Application No. 08/941,174 : ON PETITION
Filed: September 30, 1997 :
Attorney Docket No. 200303806-1 :

This is a decision on the petition under 37 CFR 1.137(b), filed on December 21, 2007, to revive the above-identified application. The delay in responding is regretted.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Karl E. Bring 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.

The application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed September 20, 2007.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,440 for payment of the issue fee; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAY 1 9 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Paper No. 16

SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037-3202

In re Application of
Jean-Pierre LUGUERN, et al.
Application No. 08/941,236
Filed: September 30, 1997
For: **CINGESTION CONTROL AND TRAFFIC MANAGEMENT SYSTEM FOR PACKET-BASED NETWORKS**

: DECISION ON PETITION TO
: WITHDRAW HOLDING OF
: ABANDONMENT

This is a decision on the petition filed August 14, 2000 for Withdrawal of Office Action of February 14, 2000 and Issuance of New Office Action, and Concurrent Request for Refund. The petition is treated as request to withdraw holding of abandonment under 37 CFR § 1.181 (a).

The application is in an abandoned status for failing to file an Appeal Brief in response to the Notice of Appeal filed August 14, 2000. A Notice of Abandonment has not been mailed.

Petitioner submits that the final Office action mailed February 14, 200 should be withdrawn.

An amendment was filed December 2, 1999 in response to a non-final Office action mailed September 2, 1999. A review of the record indicates that page 2 was missing from the amendment. Page two contained significant amendment to both pending claims 1 and 2. (A complete copy of the amendment, including page two was filed with the petition.) Apparently, the examiner did not realize the page was missing and consequently issued a final Office action on February 14, 2000. The amendment originally filed is defective and non-responsive.

In accordance with MPEP 714.03 "...(w)here the amendment is bona fide but contains a serious omission, the examiner should..., if there is insufficient time remaining, issue an Office action setting a 1-month time period to complete the reply pursuant to 37 CFR 1.135(c). ...the examiner should not further examine the application on its merits unless and until the omission is timely supplied." The amendment of December 2, 1999 contains a serious omission.

Accordingly, the holding of abandonment is withdrawn. The file will be forwarded to the examiner for preparing an Office action (Notice of Non-Responsive Amendment) setting a one-month period to complete the amendment originally filed December 2, 1999.

The final Office action mailed February 14, 2000 is vacated. The extension of time fee and the Notice of Appeal will be refunded. Any inconvenience caused petitioner due to the delay in answering the petition is regretted.

For the reasons set forth above, the petition is **GRANTED.**

The application file will be forwarded to the examiner for preparing the Notice as outlined above.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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)
6053056	2000-04-25	08941356	1997-09-30	2173.1003-001

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

	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	/Rodney D. Johnson/	Date (YYYY-MM-DD)	2008-06-24
Name	Rodney D. Johnson	Registration Number	36558

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. 6053056
Issue Date: April 25,2000
Application No. 08941356
Filed: September 30,1997
Attorney Docket No. 2173.1003-001

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

This is a decision on the electronic petition, filed June 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 June 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

In re Patent No. 5917449
Issue Date: June 29,1999
Application No. 08941367
Filed: September 30,1997
Attorney Docket No. 7097-0006-20

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

This is a decision on the electronic petition, filed September 14,2007,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 September 14,2007. 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)
5917449	1999-06-29	08941367	1997-09-30	164952USMF

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	/C. Irvin McClelland/	Date (YYYY-MM-DD)	2007-09-14
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.**

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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.

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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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Paper No. 55

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025

COPY MAILED

SEP 17 2004

OFFICE OF PETITIONS

In re Application of :
Ahmad Zandi et al :
Application No. 08/941,466 : ON PETITION
Filed: September 30, 1997 :
Attorney Docket No. 74451.P024C :

This is a decision on the petition under 37 CFR 1.137(b), filed October 14, 2003, 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 29, 2002, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on September 30, 2002. See MPEP 1215.04.

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.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.[1]

The application file is being forwarded to Technology Center AU 2625

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

cc: MICHAEL J. MALLIE
1279 OAKMEAD PARKWAY
SAN JOSE, CA 94085

[1] Effective September 27, 2004, the phone number will be 571-272-3220.

D-42003_4

RBH

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 27

FEB - 2 2000

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREGORY K. WILLIAMS and SEAN A. BRADY

Appeal No. 1997-4002
Application 08/459,880[1]

MAILED

JAN 31 2000

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

HEARD: December 7, 1999

Before FRANKFORT, STAAB and GONZALES, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 25-27, 29 and 32-35. Claims 28, 30 and 31, the only other remaining claims in the application, have been

[1] Application for patent filed June 2, 1995. According to the appellants, the application is a division of Application 08/252,125, filed June 1, 1994, now abandoned; which is a continuation of Application 08/050,942, filed April 21, 1993, now abandoned.

withdrawn from further consideration under 37 CFR § 1.142(b) as not being readable on the elected species.[2,3]

By way of background, the appealed subject matter in the present application is related to the appealed subject matter in Appeal No. 1998-1647 in appellants' copending application 08/668,503, which appeal is decided currently herewith.

Appellants' invention pertains to a patch bag, that is, a bag having a patch applied to one of its surfaces to increase its resistance to puncture. As explained on page 1 of appellants' specification, the invention is designed for the packaging of bone-in cuts of meat. In this environment, the patch prevents or reduces the likelihood that a bone will completely puncture or rupture the bag and patch combination. According to appellants, the edge portion of the bag is particularly vulnerable to puncture in the packaging of certain cuts of bone-in meat. Accordingly, an objective of appellants' invention is to provide a patch bag wherein the patch "may fold around the edge of the

[2] The requirement for election was made in Paper No. 6 of parent application 08/252,125.

[3] An amendment filed concurrently with the answer correcting a minor deficiency in claim 25 have been entered. See page 2 of the answer.

bag in [its] lay flat position" (specification, page 5) to provide increased protection against puncture at this location. Appellants disclose on pages 8-10 of the specification a method of making a patch bag having a patch that folds around an edge of the bag.[4] This method may be used to make end-seal patch bags (see Figure 3) wherein the end of the bag is sealed and a patch 8 folds around a side edge of the bag. The disclosed method may also be used to make side-seal bags (see Figure 4) where the sides of the bag are sealed and a patch 8 folds around a bottom end of the bag. The appealed claims of the present application are directed to a side-seal bag, i.e., a bag of the type illustrated in Figure 4. Independent claim 25, a copy of which is found in an appendix to the brief, is illustrative of the appealed subject matter.

The references of record relied upon by the examiner in support of a rejection under 35 U.S.C. § 103 are:

Schirmer	4,606,922	Aug. 19, 1986
Ferguson	4,765,857	Aug. 23, 1988

[4]Said method is the subject of appellants' U.S. Patent 5,540,646, based on application 08/407,793, a division of application 08/050,942. The '942 application is the grandparent of the present application.

06/27/00 TUE 12:50 [TX/RX NO 6468] 020

Claims 25-27, 29 and 32-35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ferguson in view of Schirmer.[5]

The rejection is explained in the examiner's answer (Paper No. 16, mailed April 28, 1997).

The opposing viewpoints of appellants are set forth in the brief (Paper No. 14, filed March 28, 1997).

Independent claim 25 calls for a side-seal bag having a patch "covering at least a segment of the bottomline" of the bag. Claim 34, the only other independent claim on appeal, contains identical language. The examiner concedes that Ferguson does not meet this claim limitation ("Ferguson's patches do not cover at least a segment of the bottomline." (answer, page 3)). The examiner contends, however, that

> the Ferguson patent provides evidence that one of ordinary skill in the art, at the time the invention was made, was aware of the problem of meat bones puncturing the material of the heat shrinkable bags in which they were packaged. See Ferguson at col. 1, lines 15-23. In addition, an artisan was aware that the solution to the problem was attaching patches to the bags in the locations subject to being punctured.

---

[5]The final rejection (Paper No. 10) also included rejections of the appealed claims under 35 U.S.C. § 112, first and second paragraphs. However, the examiner has withdrawn these rejections. See page 3 of the answer.

06/27/00 TUE 12:50 [TX/RX NO 6468] 021

> See Ferguson at col. 1, lines 35-38. Thus, the general knowledge of one of ordinary skill in the art at the time the invention was made provides the suggestion or motivation to modify Ferguson's bag as set out in the rejection. [Answer, page 7.]

Based on the above, the examiner considers that it would have been obvious

> to extend one of Ferguson's patches to cover at least a segment of the bottomline of the bag because one of ordinary skill in the art, knowing that a patch on a bone-in meat bag prevents the bag from being punctured, would have sought to cover any vulnerable area with a patch, including the bottomline of the bag. [Answer, page 5.]

Implicit in the above is the examiner's position that the patch bag of Ferguson, modified in the manner proposed, would correspond to the claimed subject matter in all respects.

We have carefully reviewed the appealed claims, appellants' specification, the applied references, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we conclude that the standing § 103 rejection is not sustainable.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the

invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Id.*

We fully appreciate that in Ferguson, the patch 8 is sized such that it covers and protects a substantial portion of one or both sides of a flattened, lay-flat bag (column 3, lines 6-10). While Ferguson's patch 8 approaches the edges of the bag in its flattened lay-flat position, it is clear that it does not in any sense cover an edge of the lay-flat bag. Concerning Schirmer, the examiner does not contend, and it is not apparent to us, that this reference makes up for the above noted deficiency in Ferguson. Thus, we conclude that the examiner has failed to advance any factual basis to support his conclusion that it would have been obvious to one of ordinary skill in the art to modify Ferguson in the manner proposed. The mere fact that Ferguson's patch could be extended up to or past the bottomline of the bag does not suffice. *See In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (the circumstance that the prior art *could* be modified to meet a claim would not have made the modification obvious unless the prior art suggested the

desirability of the modification). Here, neither Ferguson nor Schirmer contains a suggestion for the modification proposed by the examiner.[6]

Furthermore, Ferguson provides no guidance whatsoever as to how the patch in applied to the bag. Hence, even if the patch of Ferguson were extended up to or past the bottomline of the bag as proposed by the examiner, it is not apparent to us that the extended patch would necessarily "cover" at least a segment of the bottomline, as called for in each of the independent claims on appeal. Stated differently, even if the proposed modification of Ferguson were to be made, it is not clear to us that the claimed subject matter would result, the examiner's view to the contrary notwithstanding.

In light of the above, we will not sustain the standing 35 U.S.C. § 103 rejection of claims 25-27, 29 and 32-35 as being unpatentable over Ferguson in view of Schirmer.

---

[6]In this regard, the examiner's reliance on case law such as *In re Shepard*, 319 F.2d 194, 138 USPQ 148 (CCPA 1963); *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962); and *In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969) to fill this gap in the evidentiary basis for the rejection is not sufficient.

Appeal No. 1997-4002
Application 08/459,880

The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
)
)
LAWRENCE J. STAAB) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
)
JOHN F. GONZALES) INTERFERENCES
Administrative Patent Judge)

LJS/pgg

Appeal No. 1997-4002
Application 08/459,880

W. R. Grace & Co. Conn
P.O. Box 464
Duncan, SC 29334

JUN. 27 00(TUE) 11:20 ORTOVAC/E /DUNCAN TEL:864 45 51 P.027

RBH

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

D_42003-05

Paper No. 36

FEB - 2 2000

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

FEB 3 2000

Ex parte GREGORY K. WILLIAMS and SEAN A. BRADY

Appeal No. 1998-1647
Application 08/668,503[1]

MAILED

JAN 31 2000

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

HEARD: December 7, 1999

Before FRANKFORT, STAAB and GONZALES, Administrative Patent Judges.

STAAB, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 25-28, 30, 31, 33, 34, 44 and 45. Claims 29, 32, 35-43, 46 and 47, the only other claims remaining in the

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[1] Application for patent filed July 2, 1996. According to appellants, the application is a continuation of Application 08/252,125, filed June 1, 1994, now abandoned; which is a continuation of Application 08/050,942, filed April 21, 1993, now abandoned.

application, have been withdrawn from further consideration under 37 CFR § 1.142(b) as not being readable on the elected invention.[2] We reverse.

By way of background, the appealed subject matter in the present application is related to the appealed subject matter in Appeal No. 1997-4002 in appellants' copending application 08/459,880, which appeal is decided currently herewith.

Appellants' invention pertains to a patch bag, that is, a bag having a patch applied to one of its surfaces to increase its resistance to puncture. As explained on page 1 of appellants' specification, the invention is designed for the packaging of bone-in cuts of meat. In this environment, the patch prevents or reduces the likelihood that a bone will completely puncture or rupture the bag and patch combination. According to appellants, the edge portion of the bag is particularly vulnerable to puncture in the packaging of certain cuts of bone-in meat. Accordingly, an objective of appellants' invention is to provide a patch bag wherein the patch "may fold around the edge of the

[2] The requirement for election was made in Paper No. 6 of parent application 08/252,125.

06/27/00 TUE 12:50 [TX/RX NO 6468] 028

bag in [its] lay flat position" (specification, page 5) to provide increased protection against puncture at this location. Appellants disclose on pages 8-10 of the specification a method of making a patch bag having a patch that folds around an edge of the bag.[3] This method may be used to make end-seal patch bags (see Figure 3) wherein the end of the bag is sealed and a patch 8 folds around a side edge of the bag. The disclosed method may also be used to make side-seal bags (see Figure 4) where the sides of the bag are sealed and a patch 8 folds around a bottom end of the bag. The appealed claims of the present application are directed to an end-seal bag, i.e., a bag of the type illustrated in Figure 3. Independent claim 25, a copy of which is found in an appendix to the brief, is illustrative of the appealed subject matter.

The references of record relied upon by the examiner in support of a rejection under 35 U.S.C. § 103 are:

Kuehne	4,534,984	Aug. 13, 1985
Ferguson	4,765,857	Aug. 23, 1988

[3] Said method is the subject of appellants' U.S. Patent 5,540,646, based on application 08/407,793, a division of application 08/050,942. The '942 application is the grandparent of the present application.

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Claims 25-28, 30, 31, 33, 34, 44 and 45 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ferguson in view of Kuehne.

The rejection is explained in the examiner's answer (Paper No. 27, mailed October 2, 1997).

The opposing viewpoints of appellants are set forth in the brief (Paper No. 26, filed August 27, 1997) and the "reply brief" (Paper No. 29, filed December 4, 1997).[4]

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[4] With respect to appellants' "reply brief," the following quote from M.P.E.P § 1208.03 is noted:

> Amendments, affidavits, and/or other evidence must be submitted in papers separate from the reply brief, and the entry of such papers is subject to the provisions of 37 CFR 1.116 and 37 CFR 1.195. A paper that contains an amendment (or evidence) is not a reply brief within the meaning of 37 CFR 1.193(b). Such paper will not be entitled to entry simply because it is characterized as a reply brief.

Since appellants' Paper No. 29, styled "Reply Brief Under 37 CFR 1.193," inappropriately includes evidence of nonobviousness in the form of three declarations under 37 CFR 1.132, it is not a reply brief within the meaning of 37 CFR 1.193(b) and therefore was not entitled to entry as a matter of right. Notwithstanding the above, the examiner entered appellants' "reply brief" (see Paper No. 30, mailed December 19, 1997). However, in so doing, the examiner inappropriately failed to discuss the impact of the three attached declarations, which presumably were also entered since they were included as an integral part of Paper No. 29. While the above circumstances would normally necessitate a remand to the examiner for the purpose of having him state on the record why the declarations do not overcome the standing § 103 rejection, in this particular instance the examiner's views with

Independent claim 25 calls for an end-seal bag having a patch "covering at least a segment of at least one member selected from the group consisting of the first side edge and the second side edge" of the bag. Claim 44, the only other independent claim on appeal, contains identical language. The examiner concedes that Ferguson does not meet this claim limitation ("Ferguson's patches do not cover at least a segment of a side edge." (answer, page 3)). However, the examiner directs our attention to column 3, lines 30-35, of Ferguson wherein the dimensions of the patch 8 and the bag 12 are disclosed. The examiner observes that Ferguson's patch comes within ¼" of a side edge of the bag, such that there would be a maximum of ¼" of uncovered bag material between the patch and a side edge. The examiner considers that

> [i]t would have been . . . obvious [to one of ordinary skill in the art] to extend Ferguson's patches ¼ of an inch to cover at least a segment of one or more side edges because doing so is simply a matter of degree and results in the protection of the bag material up to and including at least one side edge of the bag. [Answer, page 3.]

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respect to said declarations are moot in that we do not consider that a *prima facie* case of obviousness of the claimed subject matter has been established.

In responding to appellants' argument, the examiner further states that the claimed subject matter would have been obvious because "it is clear that a patch can be adhered to Ferguson's bag in any desired location" (answer, page 4). Further insight into the examiner's rationale in rejecting the claims is found in the final rejection (Paper No. 22), wherein the examiner states that

> workers skilled in the food packaging art must be presumed to know something about packaging bone-in cuts of meat apart from what Ferguson and Kuehne disclose. Providing Ferguson's patches with an additional ¼ inch of material along each of their side edges to provide protection all of the way to the side edges of the bag would simply have been obvious to an artisan, given that Ferguson is already providing protection for 17½ inches of the bag walls for the same reason. [Final rejection, page 3.]

We have carefully reviewed the appealed claims, appellants' specification, the applied references, and the respective viewpoints of appellants and the examiner. As a consequence of our review, we conclude that the standing § 103 rejection is not sustainable.

Rejections based on 35 U.S.C. § 103 must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). In making such

a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Id.*

We fully appreciate that in Ferguson, the patch 8 is sized such that it covers and protects a substantial portion of one or both sides of a flattened, lay-flat bag (column 3, lines 6-10). While Ferguson's patch 8 approaches the edges of the bag in its flattened lay-flat position, it is clear that it does not in any sense cover an edge of the lay-flat bag. Concerning Kuehne, the examiner does not contend, and it is not apparent to us, that this reference makes up for the above noted deficiency in Ferguson. Thus, we conclude that the examiner has failed to advance any factual basis to support his conclusion that it would have been obvious to one of ordinary skill in the art to modify Ferguson in the manner proposed. The mere fact that Ferguson's patch could be extended up to or past a side edge of the bag does not suffice. *See In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (the circumstance that the prior art *could*

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be modified to meet a claim would not have made the modification obvious unless the prior art suggested the desirability of the modification). Here, neither Ferguson nor Kuehne contains a suggestion for the modification proposed by the examiner.[5]

Furthermore, Ferguson provides no guidance whatsoever as to how the patch in applied to the bag. Hence, even if the patch of Ferguson were extended up to or past a side edge of the bag as proposed by the examiner, it is not apparent to us that the extended patch would necessarily "cover" at least a segment of that side's edge, as called for in each of the independent claims on appeal. Stated differently, even if the proposed modification of Ferguson were to be made, it is not clear to us that the claimed subject matter would result, the examiner's view to the contrary notwithstanding.

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[5] In this regard, the examiner's reliance on case law such as *In re Shepard*, 319 F.2d 194, 138 USPQ 148 (CCPA 1963); *In re Jacoby*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962); and *In re Bozek*, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969) to fill this gap in the evidentiary basis for the rejection is not sufficient.

Appeal No. 1998-1647
Application 08/668,503

In light of the above, we will not sustain the standing 35 U.S.C. § 103 rejection of claims 25-28, 30, 31, 33, 34, 44 and 45 as being unpatentable over Ferguson in view of Kuehne.

The decision of the examiner is reversed.

REVERSED

CHARLES E. FRANKFORT)
Administrative Patent Judge)
)
)
LAWRENCE J. STAAB) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
)
JOHN F. GONZALES) INTERFERENCES
Administrative Patent Judge)

LJS/pgg

Appeal No. 1998-1647
Application 08/668,503

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MAY 25 2006

OFFICE OF PETITIONS

In re Application of	:
Chacon	:
U.S. Patent No.: 7,020,594	:
Issue Date: March 28, 2006	:
Application No. 08/941,832	: Decision on Petition for
Filing Date: October 1, 1997	: Patent Term Extension
Attorney Docket No.: B99-084	:
For: Electronic Kanban Worksheet For the	:
Design and Implementation of Virtual or	:
Electronic Kanban Systems	:

The above-identified application has been forwarded to the undersigned for consideration on a petition for patent term extension entitled "Petition Under 37 CFR 1.181 to request Patent Term Extension Under 37 CFR 1.701," received on March 23, 2006.

The petition is granted-in-part.

Petitioner notes that the Notice of Allowance dated October 3, 2005, in the above-identified application incorrectly stated that the patent term extension is 0 days. Petitioner states that applicant is entitled to 1,593 days of patent term extension, not the 0 days of extension as stated in the Notice of Allowance.

Petitioner notes that the above-identified application was filed on October 1, 1997, a Notice of Appeal was filed on April 2, 2001, a first remand by the Board was mailed on April 25, 2003, a second remand by the Board was mailed on January 29, 2004 and final decision by the Board, reversing the adverse determination of patentability was made on August 11, 2005. The application was allowed on October 3, 2005, but the Determination of Patent Term Extension under 35 U.S.C. 154(b) included with the Notice of Allowance in the above-identified application states that the patent term extension is zero (0) days. Petitioner asserts that patent term extension in this application is inappropriate and that the patent term should be extended by 1,593 days for the period from April 2, 2001, the date of the Notice of Appeal to August 11, 2005, the date of the last remand by the Board.

35 U.S.C. § 154(b) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000, and, as amended by

the "American Inventors Protection Act of 1999," enacted November 29, 1999, as part of Public Law 106-113, for those delays and others in applications filed on or after May 29, 2000

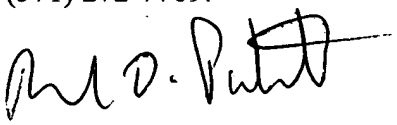
A Notice of Appeal was filed in the above-identified application on April 2, 2001. On January 29, 2004, the Board of Appeals and Interferences remanded the application to the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a remand by a panel of the BPAI to the Examiner, the patent to issue from the application is entitled to an extension of the patent term.[2] The period of delay in the above-identified application is the period beginning on April 2, 2001, the date that the Notice of Appeal was filed and ending on January 29, 2004, the date of the remand by a panel of the BPAI, which is a final decision in favor of the applicant. Three years after the earliest effective filing date of the application is October 1, 2000. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the first period of extension is **1,033-days**, the period from April 2, 2001 to January 29, 2004, including the beginning and end dates.

While Petitioner argues that the extension should be calculated until the August 11, 2005, that remand was not by a panel of the BPAI. According to 37 CFR 1.701(a)(3), a patent is entitled to patent term extension if an application is remanded by a panel of the Board of Patent Appeals and Interferences and the remand is the last action by a panel of the Board of Patent Appeals and Interferences prior to the mailing of a notice of allowance under 35 U.S.C. 151 in the application.

The Office will issue a certificate of correction in order to rectify the error regarding the patent term extension information. See 35 U.S.C. 254 and 37 CFR 1.322. Patentee is given THIRTY (30) DAYS to respond to this letter. If no objection is received from patentee, the Office will issue a certificate of correction indicating that the patent term is extended for **1,033** days under 35 U.S.C. 154(b). This time limit is NOT extendible under 37 CFR 1.136.

Petitioner's deposit account has not been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



Mark O. Polutta
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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[2]Revision of Patent Term Extension and Patent Term Adjustment Provisions, 78 FR 21704, 21705 (April 22, 2004), 1282 Off. Gaz. Pat. Office Notices 100 (May 18, 2004) (final rule).

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of :
Jeffrey J. Kriz :
Application No. 08/941,963 : DECISION GRANTING PETITION
Filed: October 1, 1997 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. H16-17016-US :

This is a decision on the petition, filed September 7, 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 June 6, 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 the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2667 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new 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 ST[redacted] DEPARTMENT OF COMMERCE
Patent and T[redacted]mark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
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Washington, D.C. 20231

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SPECIAL PROGRAMS OFFICE
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In re Application of	:	
Glenn Boucher, et al	:	
Application No. 08/942,264	:	DECISION DISMISSING
Filed: October 1, 1997	:	PETITION
Attorney Docket No. E-679	:	

This is a decision on the petition filed December 14, 1998, requesting that the above-identified application be accorded a filing date of September 30, 1997, rather than its presently accorded filing date of October 1, 1997.

The petition states that seven different applications (including the above-identified application and application No. 08/942,261) were filed in the same Express Mail package bearing Express Mail receipt No. EI289769455US. Petitioners should note 37 CFR 1.4(c) which suggests that each application be submitted as a separate letter. Found among the original application papers of the above-identified application is a "Certificate of Mailing by Express Mail" showing Express Mail number EI289769455US thereon.

A review of a copy of Express Mail receipt No. EI289769455US submitted in application No. 08/942,261 reveals that it shows an October 1997 "date-in" thereon. However, the legibility of the copy is such that it cannot be determined which day of October 1997 is specified thereon. Nevertheless, the copy of Express Mail receipt No. EI289769455US submitted in application No. 08/942,261 is evidence that petitioners are not entitled to a filing date of September 30, 1997 under 37 CFR 1.10.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped

thereon by the Office. See section 503, Manual Of Patent Examining Procedure (MPEP 503). New patent applications filed in accordance with 37 CFR 1.10 will be stamped by the Office with the date of deposit as "Express Mail" with the United States Postal Service. See section 505, Manual Of Patent Examining Procedure (MPEP 505).

The present petition was not accompanied by a copy of an itemized postcard receipt for the original application papers for the above-identified application. However, a review of application No. 08/942,261 reveals that it contains a copy of an itemized postcard receipt listing the items originally filed therein and showing an October 1, 1997 Office date stamp. As stated previously, application No. 08/942,261 was filed in the same Express Mail package as the above-identified application.

In view of the above, petitioners' request to accord the application a filing date of September 30, 1997 is dismissed.

The application is being returned to Technology Center Art Unit 2771 for consideration of the amendment filed November 22, 1999.

Any inquiries related to this decision should be directed to Legal Advisor James Engel at (703) 308-5106.

Eugenia Jones

Eugenia Jones
Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

JJE

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In re Patent No. 6070859
Issue Date: June 6,2000
Application No. 08942750
Filed: October 2,1997
Attorney Docket No. 970DO010

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

This is a decision on the electronic petition, filed November 18,2009 ,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 November 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.

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)
6070859	2000-06-06	08942750	1997-10-02	0801103-005

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 david torche/	Date (YYYY-MM-DD)	2009-11-18
Name	Mark David Torche	Registration Number	45823

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.

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. 25

MAILED

OCT 31 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte SCOTT R. WATTERSON and WILLIAM T. DALEBOUT

Appeal No. 2002-0917
Application No. 08/942,810

ON BRIEF

Before ABRAMS, STAAB and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 21-37, which are all of the claims pending in this application.

We AFFIRM.

BACKGROUND

The appellants' invention relates to a treadmill having a vertically extending support structure, a tread base that may be reoriented from a first or exercise position to a second or upright storage position and a gas spring connected between the support structure and the tread base for assisting a user in rotating the tread base between the operating position and the storage position. Claim 21 is illustrative of the invention and reads as follows:

> 21. A treadmill comprising:
>
> a support structure;
>
> a tread base rotatably attached to the support structure such that the tread base is selectively moveable between an operating position and a storage position; and
>
> a gas spring connected between the support structure and the tread base.

The examiner relied upon the following prior art references of record in rejecting the appealed claims:

Schönenberger	4,026,545	May 31, 1977
Teague, Jr. (Teague)	4,370,766	Feb. 1, 1983
Rorabaugh	4,664,646	May 12, 1987
Wilkinson et al. (Wilkinson)	5,207,622	May 4, 1993

The following rejections are before us for review.

(1) Claims 21-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rorabaugh in view of Teague.

(2) Claim 35 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Rorabaugh in view of Teague and Schönenberger.

(3) Claims 36 and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rorabaugh in view of Teague and Wilkinson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the final rejection and answer (Paper Nos. 17 and 24) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 23) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Appellants (brief, page 8) state that claims 21-24 and 31-34 stand or fall together and that claims 25-30 are separately patentable therefrom. The sole basis for appellants' separate grouping of claims 25-30, however, is that claim 25 recites a means-plus-function limitation ("lift assist means ... for assisting...") whose scope must be determined from the specification in accordance with 35 U.S.C. § 112, sixth paragraph (brief, page 8), whereas claims 21 and 31 recite a "gas spring," which is not

a means-plus-function limitation. With respect to all of claims 21-34, appellants' argument (brief, pages 10-14) is that the applied references would not have suggested the modification proposed by the examiner. Appellants have not argued, with respect to any of these claims, that, even if the modification were made, the claimed invention would not result or offered any other argument as to why claims 25-30 are separately patentable from claims 21-24 and 31-34. As set forth in 37 CFR § 1.192(c)(7), "[m]erely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable." Thus, in accordance with 37 CFR § 1.192(c)(7), we have selected claim 21 as the representative claim to decide the appeal of rejection (1), with claims 22-34 standing or falling therewith. See In re Young, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991); In re Wood, 582 F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978). Likewise, in accordance with 37 CFR § 1.192(c)(7), we have selected claim 36 as the representative claim to decide the appeal of rejection (3), with claim 37, which appellants have grouped therewith (brief, page 8), standing or falling therewith.

Turning first to rejection (1), Rorabaugh, the jumping off point of the examiner's obviousness determination, discloses a folding treadmill comprising a support structure (cabinet 37) and a tread base (treadmill frame 36, treadmill 13, etc.) rotatably attached to the support structure for selective movement between an operating position (Figure 2) and a storage position. As acknowledged by the examiner (final rejection, page 2),

Rorabaugh lacks a gas spring connected between the support structure and the tread base as called for in claim 21. To overcome this deficiency, however, the examiner relies upon the teachings of Teague of providing a counterbalancing mechanism (note lever 50, link 62, etc. in Figure 3) and a pair of gas springs 56 on a folding bed movable between an open position and a closed position stored within a cabinet 9, the gas springs providing the lifting force or moment to move the bed from its open position to the position where its center of gravity 61 passes over the pivot axis 13 and, when the bed continues to move toward the fully closed position, the springs continuing to exert an expanding force opposing the force of gravity to act against that continued movement. Likewise, when the bed is moved from its fully closed position toward the open position, the springs expand and aid in moving the bed from its fully closed position to the position where its center of gravity is above the pivot axis 13 (column 2, lines 3-14). According to the examiner, it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to provide a gas spring between the support structure (cabinet 37) and tread base (treadmill 13, treadmill frame 36, etc.) to provide an assist in moving the support structure into a storage position (final rejection, page 3). For the reasons which follow, we agree with the examiner.

Appellants argue (brief, pages 12-13) that Rorabaugh makes no mention of the need for a gas spring connected between the support structure and the tread base to assist in rotating the tread base between the operating position and the storage position

and that Teague, likewise, makes no reference to the need or desirability of applying the counterbalance mechanism disclosed therein to any other application or field of art. Thus, according to appellants, the applied references provide no teaching or suggestion to make the modification proposed by the examiner.

It is well established that nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986). Rather, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). While there must be some suggestion or motivation for one of ordinary skill in the art to combine the teachings of references, it is not necessary that such be found within the four corners of the references themselves; a conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. See In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). Further, in an obviousness assessment, skill is presumed on the part of the artisan, rather than the lack thereof. In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985). Insofar as the references themselves are concerned, we are bound to consider the disclosure of each for what it

fairly teaches one of ordinary skill in the art, including the inferences which one of ordinary skill in the art would reasonably have been expected to draw therefrom. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966) and In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

We recognize that Teague is directed to a foldable bed, not a treadmill, and thus may not be considered to be within appellants' field of endeavor. Nevertheless, a reference is reasonably pertinent if, even though it may be in a different field of endeavor, it logically would have commended itself to an inventor's attention in considering his problem because of the matter with which it deals. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992). In the present instance, one of the problems facing appellants (specification, pages 25-26) was the need for a lift assistance assembly to provide a force or torque urging the tread base from a first exercise position toward a second storage position. Teague teaches a lift assist assembly for providing a lift force to assist a user in folding a foldable structure (a bed) from a lowered horizontal position, against the force of gravity, to a vertical storage position and logically would have commended itself to an artisan's attention in considering appellants' problem. Thus, we conclude that Teague is analogous art with respect to appellants' invention. Assuming, as we must, that one of ordinary skill in the field of appellants' invention had knowledge of the teachings of Teague, such a person would have appreciated that the rotation of the treadmill 13 and treadmill frame 36 of

Rorabaugh from the horizontal exercise position to the vertical storage position would require application of significant lift force to oppose gravity and would have recognized the self-evident advantages of providing a lift assist assembly, including a gas spring exerting a lift force opposing gravity as taught by Teague, on the foldable treadmill of Rorabaugh to assist the user in applying such lift force.[1]

For the foregoing reasons, we conclude that the combined teachings of Rorabaugh and Teague are sufficient to have suggested the subject matter of claim 21. Thus, we affirm the examiner's decision to reject claim 21, as well as claims 22-34 which fall with claim 21, as discussed above.

As for rejections (2) and (3), appellants do not contest the examiner's determination that the additional modifications of Rorabaugh to provide a latch, as taught by Schönenberger, and an inclination means, as taught by Wilkinson, would have been obvious to one of ordinary skill in the art at the time of appellants' invention. Rather, appellants' only arguments with respect to these rejections is that neither Schönenberger nor Wilkinson would have suggested providing a gas spring for lift assist, as required in each of the independent claims on appeal, and thus does not overcome the perceived deficiency of the combination of Rorabaugh and Teague discussed above. In light of our discussion above, it should be apparent that we do not

[1] To conclude otherwise would be to improperly assume that the artisan possesses less than ordinary skill. Sovish, 769 F.2d at 743, 226 USPQ at 774.

find these arguments persuasive with regard to rejections (2) and (3). It follows that we shall also affirm the decision of the examiner to reject claim 35 as being unpatentable over Rorabaugh in view of Teague and Schönenberger and to reject claim 36, as well as claim 37 which falls therewith, as being unpatentable over Rorabaugh in view of Teague and Wilkinson.

CONCLUSION

To summarize, the decision of the examiner to reject claims 21-37 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS)
Administrative Patent Judge)
)
)
)
)
LAWRENCE J. STAAB) BOARD OF PATENT
Administrative Patent Judge) APPEALS
) AND
) INTERFERENCES
)
)
)
JENNIFER D. BAHR)
Administrative Patent Judge)

Workman, Nydegger & Seeley
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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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In re Patent No. 6734147
Issue Date: May 11,2004
Application No. 08943123
Filed: October 3,1997
Attorney Docket No. 1064.0011-03

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

This is a decision on the electronic petition, filed June 18,2008 ,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 June 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.

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)
6734147	2004-05-11	08943123	1997-10-03	1064.0011-03

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	/Robert J. Eichelburg/	Date (YYYY-MM-DD)	2008-06-18
Name	Robert J. Eichelburg	Registration Number	23057

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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 15

WILLIAM P BERRIDGE
OLIFF & BERRIDGE
P O BOX 19928
ALEXANDRIA, VA 22320

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NOV 0 9 2000

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Fahy
Application No. 08/943,147
Filed: October 10, 1997
For: METHODS OF USING ICE-CONTROLLED MOLECULES

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the renewed petition under 37 CFR 1.47(b), filed January 24, 2000.

The petition is granted.

A petition under 37 CFR 1.47(b), filed May 15, 1998, was dismissed on November 24, 1999 for failure to provide evidence of Organ, Inc.'s proprietary interest in the subject matter of the above-identified patent application.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Mr. Berridge establishes that the inventor was mailed the application papers, including the specification, claims and drawings, and the inventor refused sign the declaration. In addition, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and petitioner has shown that such action is necessary to prevent irreparable damage. Lastly, with this renewed petition, applicant has shown that Organ, Inc. has a proprietary interest in the above-identified application by providing a copy of the confidential information and proprietary rights agreement that establishes the inventor had an obligation to assign any patent rights to Organ, Inc.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to the Office of Initial Patent Examination for issuance of a corrected filing receipt. Thereafter the application will be returned to Group Art Unit 1600 for further processing.

Telephone inquiries should be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

Beverly M. Flanagan
Supervisory 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.

ROBINSON INTELLECTUAL PROPERTY LAW OFFICE
PMB 955
21010 SOUTHBANK STREET
POTMAC FALLS, VA 20165

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FEB 05 2004

OFFICE OF PETITIONS

In re Application of
Masaaki Hiroki, et al.
Application No. 08/943,238
Filed: October 3, 1997
Attorney Docket No. 0756-1724

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed January 29, 2004, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on January 5, 2004, 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 (703) 305-9220.

After the application is received in the Office of Petitions, the file will be forwarded to Technology Center AU 2814 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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
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Paper No. 12

Thomas J. Perkowski
Soundview Plaza
1266 East Main Street
Stamford, CT 06902

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MAY 0 8 2003

OFFICE OF PETITIONS

In re application of
Leroy Dickson et al.
Application No. 08/943,288
Filing Date: October 3, 1997
Attorney Docket No. 108-001USANK0

N PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 23, 1999, and status inquiry submitted April 14, 2003, 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 August 7, 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) have been obtained. Accordingly, the above-identified application became abandoned on February 8, 2001.

This application is being revived solely for purposes of continuity with a continued prosecution application (CPA) filed on June 23, 1999.

The application file is being forwarded to Technology Center AU 2876 for processing the CPA filed June 23, 1999.

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: Siemens Corporation
Intellectual Property Department
170 Wood Avenue South, 5th Floor
Iselin, NJ 08830

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. 6089795
Issue Date: July 18,2000
Application No. 08943392
Filed: October 3,1997
Attorney Docket No. 2500

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

This is a decision on the electronic petition, filed August 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 August 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 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)
6089795	2000-07-18	08943392	1997-10-03	BL1-2500-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			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	/R Reams Goodloe Jr/	Date (YYYY-MM-DD)	2008-08-19
Name	R Reams Goodloe Jr	Registration Number	32466

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.

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)
6385662	2002-05-07	08943708	1997-10-03	P08560-US1

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 C. Han, Reg No 41403/	Date (YYYY-MM-DD)	2010-05-20
Name	John C. Han	Registration Number	41403

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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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. 6385662
Issue Date: May 7,2002
Application No. 08943708
Filed: October 3,1997
Attorney Docket No. 8993-004

:
: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 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 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.

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)
5,978,786	1999-11-02	08/943,742	1997-10-03	Draper-2

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	/Ronald E. Cahill/	Date (YYYY-MM-DD)	2008-04-08
Name	Ronald E. Cahill	Registration Number	38403

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. 5978786
Issue Date: November 2,1999
Application No. 08943742
Filed: October 3,1997
Attorney Docket No. DR-232J

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

This is a decision on the electronic petition, filed April 8,2008 ,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 8,2008 . 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. 5887319
Issue Date: March 30,1999
Application No. 08943879
Filed: October 3,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed August 8,2007 ,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 August 8,2007 . 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

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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)
5,887,319	1999-03-30	08/943,879	1997-10-03	TE1

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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◉ 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	/Themi Anagnos/	Date (YYYY-MM-DD)	2007-08-08
Name	Themi Anagnos	Registration Number	47388

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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

APR -2 2002

Paper No. 35

In re Application of :
Vincent Bryan *et al* : DECISION ON PETITION
Application No. 08/944,234 :
Filed: October 6, 1997 :
Attorney Docket No. A8038

This is a decision on the petition filed on August 13, 2001 by which petitioners request withdrawal of the holding of abandonment.

The petition is dismissed as moot.

On the first page of the petition, petitioners list nine items that are attached to the petition. The first seven items are previously filed papers or attachments thereto (item number 7). The originals of all of those papers have been endorsed into the application file, and the application has previously been restored to pending status in view of the request for filing of a Continued Prosecution Application (CPA) filed on July 5, 2001. Accordingly, the petition is moot.

The application is being forwarded to the Head Supervisory Applications Examiner to change the correspondence address in accordance with paper No. 29, the Revocation and Appointment of Attorney filed on July 3, 2001. Thereafter the application will be returned to the examiner for consideration of the CPA filed on July 5, 2001, the concurrently filed preliminary amendment, and the concurrently filed request for interference.

PETITION DISMISSED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

Sughrue, Mion, Zinn, MacPeak & Seas, PLLC
2100 Pennsylvania Avenue, NW
Washington, DC 20037-3213

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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LOTT & FRIEDLAND, P.A.
P.O. BOX 141098
CORAL GABLES FL 33114-1098

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JUN 21 2007

OFFICE OF PETITIONS

In re Patent No. 5,769,105 :
Issue Date: June 23, 1998 :
Application No. 08/944,373 : ON PETITION
Filed: October 6, 1997 :
Attorney Docket No. 13078-8-0010 :

This is a decision on the renewed petition under 37 CFR 1.378(c), filed May 15, 2007 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 24, 2006 for failure to pay the 7.5 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.

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

The patent file is being forwarded to Files Repository.

Charlema R. Grant

Charlema Grant
Petitions Attorney
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. 15

Fitzpatrick Cella Harper & Scinto
30 Rockefeller Plaza
New York, NY 10112

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JAN 2 2 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Laurence A. Lavendel et al. :
Application No. 08/944,435 : ON PETITION
Filed: October 6, 1997 :
Attorney Docket No. 36-P143 :

This is a decision on the renewed petition under 37 CFR 1.137(b), filed December 21, 2000, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit a response to the final Office action mailed June 7, 2000, which set a shortened statutory reply period of three months. An Amendment and a three month extension of time under the provisions of 37 CFR 1.136(a) was obtained on November 9, 2000. The Amendment did not place the case in condition for allowance. Therefore, the application became abandoned on November 10, 2000.

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 file will be forwarded to Technology Center, Art Unit 2773, for further processing.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examinatin 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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2/18/09

In re Patent No. GUGLIELMI, GUIDO et al :
Issue Date: Jan. 4, 2000 : **DECISION GRANTING**
Appl No.: 08/944,580 : **PETITION**
Filed: Oct. 6, 1997 : *37 CFR 1.324*
For: U.S> Pat. 6,010,498 :
ENDOVASCULAR ELECTROLYTICALLY :
DETACHABLE WIRE AND TIP FOR THE :
FORMATION OF THROMBUS IN ARTERIES, VEINS, :
ANEURYSMS, VASCULAR MALFORMATIONS AND
ARTERIOVENOUS FISTULAS

This is a decision on the petition under 37 CFR 1.48, filed Feb. 9, 2007. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition 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.

Linda Dvorak
Supervisory Patent Examiner
Art Unit 3739
Patent Examining Group TC 3700

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

UNITED STATES PATENT AND TRADEMARK OFFICE

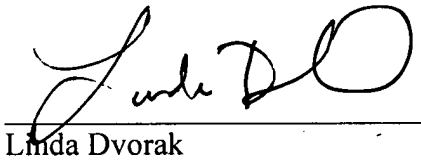
CERTIFICATE

Patent No. 6,010,498
Patented: Jan. 4, 2000

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:

Guido Guglielmi, Santa Monica, CA

Ivan Sepetka, Los Gatos, CA



Linda Dvorak
Supervisory Patent Examiner
Art Unit 3739

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: February 13, 2009
TO: Certificates of Correction Branch
FROM: Linda Dvorak
SPE, Art Unit 3739
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,010,498 as specified on the attached Certificate.

Linda Dvorak, SPE
Art Unit 3739

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. 5928135
Issue Date: July 27,1999
Application No. 08944855
Filed: October 6,1997
Attorney Docket No. END-468

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

This is a decision on the electronic petition, filed October 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 October 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.

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)
5928135	1999-07-27	08944855	1997-10-06	

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	/J. Gary Mohr/	Date (YYYY-MM-DD)	2008-10-17
Name	J. Gary Mohr	Registration Number	27575

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

In re Patent No. 5928138
Issue Date: July 27,1999
Application No. 08944856
Filed: October 6,1997
Attorney Docket No. END-491

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

This is a decision on the electronic petition, filed October 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 October 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.

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)
5928138	1999-07-27	08944856	1997-10-06	

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	/J. Gary Mohr/	Date (YYYY-MM-DD)	2008-10-17
Name	J. Gary Mohr	Registration Number	27575

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. 5869057
Issue Date: February 9,1999
Application No. 08944982
Filed: October 7,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed February 3,2009 ,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 February 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.

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)
5,869,057	1999-02-09	08/944,982	1997-10-07	A1000-00103

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 T. Serafini/	Date (YYYY-MM-DD)	2009-02-03
Name	Andrew T. Serafini	Registration Number	41303

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.

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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

Paper No. 29

JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
ATLANTA GA 30309

COPY MAILED

JAN 28 2005

OFFICE OF PETITIONS

In re Application of :
Dean et al. :
Application No. 08/945,234 : ON PETITION
Filed: January 16, 1998 :
Attorney Docket No. 0295-934/DL :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 10, 2005, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely and properly reply to the Board of Patent Appeals decision mailed February 20, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on April 21, 2004. A Notice of Abandonment was mailed November 30, 2004.

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 processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries regarding 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

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

CLIFFORD W. BROWNING
WOOD ARD EMHARDT ET AL
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, INDIANA 46204-5137

COPY MAILED

FEB 23 2005

OFFICE OF PETITIONS

In re Patent No. 5,945,009 :
Issue Date: August 31, 1999 :
Application No. 08/945,620 : NOTICE
Filed: November 26, 2004 :
Attorney Docket No. 16164-111

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.

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. 21

EXXONMOBIL RESEARCH AND ENGINEERING COMPANY
P.O. BOX 900
ANNANDALE, NJ 08801-0900

COPY MAILED

MAR 3 1 2003

OFFICE OF PETITIONS

In re Application of
Michiya Yamada et al.
Application No. 08/945,705
Filed: February 23, 1997
Attorney Docket No: JP6-131165

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 21, 2003 to revive the above-identified application.

The petition is **GRANTED**.

The above-mentioned application became abandoned for failure to reply in a timely manner to the non-final Office Action, mailed August 7, 2002 (restarted response date), which set a shortened statutory period of reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became technically abandoned at midnight on November 7, 2002.

Telephone inquiries concerning this decision should be directed to Phillip Gambel at (703) 305-4066.

The application file is being forwarded to Technology Center 1700, Art Unit 1714 for consideration of the Amendment, filed February 21, 2003.

E. Shirene Willis

E. Shirene Willis
Senior 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)
5992542	1999-11-30	08945778	1998-01-08	RIV-03/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			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 B. Dickinson/	Date (YYYY-MM-DD)	2008-01-21
Name	David B. Dickinson	Registration Number	47525

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. 5992542
Issue Date: November 30,1999
Application No. 08945778
Filed: January 8,1998
Attorney Docket No. RIVESA-1690

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

This is a decision on the electronic petition, filed January 21,2008 ,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 21,2008 . 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
www.uspto.gov
DW 08-01

Paper No. 18

CONNOLLY & HUTZ
PO BOX 2207
WILMINGTON, DE 19899-2207

COPY MAILED

AUG 3 1 2001

OFFICE OF PETITIONS

In re Application of
Pallett et al.
Application No. 08/945,821
Filed: June 15, 1998
Attorney Docket No. RP/PCT-3

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on April 27, 2001, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision (no fee) must be submitted within **TWO (2) MONTHS** from the mailing date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

The application became abandoned on September 22, 2000 for failure to timely submit a proper reply to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures ("Notice to Comply"),[1] mailed on August 21, 2000, which set an extendable 1-month reply period.[2] No response was filed and no extensions of time for reply under 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed on March 9, 2001.

The instant petition contains a paper copy and a computer readable form (CRF) copy of the sequence listing. However, upon review, the Examiner has determined that the submission contained in the instant petition continues to be in non-compliance with the August 21, 2000 Notice to Comply.[3]

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[1] See MPEP 2422.07 (Rev. 1, Feb. 2000): 37 CFR 1.821(g) requires compliance with 37 CFR 1.821(b)-(f), at the time the application is filed or within the reply period set forth in a Notice to Comply. Failure to comply results in abandonment of the application.

[2] **Paper No. 13; copy attached.** The 1-month reply period is extendable under 37 CFR 1.136(a); see MPEP 2421.03, 2422.07 (Rev. 1, Feb. 2000).

[3] See **attached courtesy copy of the 8/20/01 Notice to Comply**, item 7.

A **grantable** petition under 37 CFR 1.137(b)[4] 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). As explained above, the instant petition lacks item (1), a reply specifically required by the August 21, 2000 Notice to Comply.

A renewed petition under 37 CFR 1.137(b), should one be filed, must contain, *inter alia*, a substitute paper copy and a substitute CRF copy of the sequence listing, and a statement that no new matter beyond the disclosure in the filed application is introduced.[5]

The Office acknowledges receipt of the $1,240 petition fee.

In addition, although the practitioner signing the instant petition is one of the attorneys-of-record,[6] an address different from that in the Office record is utilized. If this practitioner desires to receive future correspondence regarding this application at a different location, a proper change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to this practitioner, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

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 CP4-3C23
2201 South Clark Place
Arlington, VA 22202

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[4] 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).

[5] MPEP 2422.07 (Rev. 1, Feb. 2000).

[6] 6/15/98 Power of Attorney.

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.

Nancy Johnson for

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachments: Copy of 8/21/00 Notice to Comply (Paper No. 13)
Courtesy copy of 8/20/01 Notice to Comply

cc w/ Attachments:
Robert G. McMorrow, Jr., Esq.
Connolly, Bove, Lodge & Hutz, LLP
1220 Market Street
Wilmington, DE 19899

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. 25

CONNOLLY BOVE LODGE
& HUTZ LLP
1220 MARKET STREET
PO BOX 2207
WILMINGTON, DE 19899

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MAY 0 1 2002

OFFICE OF PETITIONS

In re Application of
Pallett et al.
Application No. 08/945,821
Filed: June 15, 1998
Attorney Docket No. P/PCT-3

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed on January 15, 2002 (Certificate of Mailing date November 2, 2001), to revive the above-identified application.

The petition is **GRANTED.**

A Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures, mailed on August 21, 2000 ("8/21/00 Notice To Comply"), was not timely responded to. The application became abandoned on September 22, 2000. The April 27, 2001 petition under 37 CFR 1.137(b) was dismissed because the computer readable form (CRF) copy of the sequence listing enclosed with that petition was determined by the Examiner to not comply with the 8/21/00 Notice To Comply.

The instant renewed petition encloses: (1) an "Amendment And Replacement of Sequence Listing" in reply to the 8/21/00 Notice To Comply; (2) a substitute paper copy of the sequence listing; (3) a substitute CRF copy of the sequence listing;[1] (4) statements to the effect that the content of (3) is identical to that of (2), and, to that of the paper copy of sequence listing previously filed with the application; and (5) a statement that no new matter is added.

Items (1), (2) and (3) above have been approved by the Examiner for entry. The petition is thus granted.

No fee is incurred in a renewed petition under 37 CFR 1.137(b). The $1,280 payment submitted with the instant petition has been credited to Deposit Account No.03-2775 as authorized.[2]

Finally, as requested, the correspondence address for this application has been changed and made of record.

The application file is being returned to Technology Center 1600 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] The 1/15/02 copy was damaged in the mail. Applicants submitted another copy on 2/24/02. The Office sincerely apologizes for any inconvenience caused by the delay.

[2] The petition indicates a payment of $1,240. A credit of $1,280 was posted by the PTO Office of Finance. If the PTO entry should have been $1,240, counsel should submit a $40 check to the Office of Finance, along with a copy of this 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. 20

MARY-ELLEN M. DEVLIN
BOEHRINGER INGELHEIM CORP.
900 RIDGEBURY ROAD
P.O. BOX 368
RIDGEFIELD, CT 06877

COPY MAILED

FEB 27 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Patent No. RE37035
Issue Date: January 30, 2001
Application No. 08/946,602
Filed: October 7, 1997
Attorney Docket No. 5/891-1-C1

ON PETITION

This is a decision on the petition filed February 14, 2001, to waive the rules and accept the correction of the assignee on the front page of the above-identified patent.

The petition is granted.

Telephone inquiries concerning this matter may be directed to Irvin Dingle at (703) 306-5684. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Frances Hicks
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)
6,032,430	2000-03-07	08/947,720	1997-10-09	107576

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	/Gerald T. Shekleton/	Date (YYYY-MM-DD)	2008-12-21
Name	Gerald T. Shekleton	Registration Number	27466

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. 6032430
Issue Date: March 7,2000
Application No. 08947720
Filed: October 9,1997
Attorney Docket No. MVC1001US

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

This is a decision on the electronic petition, filed November 21,2008 ,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 21,2008 . 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

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.
08/947,798	10/09/1997	DANIEL E. TEDESCO	WD2-97-070	6316

22927 7590 12/12/2002

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD, CT 06905

EXAMINER	
CHOI, KYLE JAEHUN	
ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 12/12/2002

#28

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

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

#28

In re Application of	: DECISION ON PETITION UNDER
TEDESCO et al.	: 37 CFR 1.97(d) FOR
Serial No. **08/947,798**	: CONSIDERATION OF
Filed: **October 9, 1997**	: INFORMATION DISCLOSURE
For: **METHOD AND APPARATUS FOR DYNAMICALLY MANAGING VENDING MACHINE INVENTORY PRICES**	: STATEMENT AFTER FINAL REJECTION

The petition under 37 CFR 1.97(d), filed ***December 2, 2002*** for consideration of an information disclosure statement after Final has been:

[ ] GRANTED. The information disclosure statement will be considered by the examiner.

[X] DENIED.

The petition lacks:

[ ] The required fee under 37 CFR 1.97(d)(2) and 1.17(p).

[X] A proper certification as specified in 37 CFR 1.97(d)(2) and 1.97(e).

The information disclosure statement filed in this application incorrectly petitions under 37 C.F.R. §1.97(c). As a ***final Office Action*** has been previously mailed on ***July 5, 2002***, applicant's petition has been constructively treated as a petition to consider the IDS under 37 C.F.R. §1.97(d).

Since the petition is deficient for the reasons stated above, this IDS has been placed of record in the file but **will not be considered** by the examiner.

Tariq Hafiz
SPE, Art Unit 3623

Dean P. Alderucci
Five High Ridge Park
Stamford, CT 06905

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
DFW Mar-06

WALKER DIGITAL
2 HIGH RIDGE PARK
STAMFORD CT 06905

COPY MAILED

MAR 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Tedesco et al. :
Application No. 08/947,798 : DECISION ON PETITION
Filed: 15 October, 2003 :
Atty Docket No. WD2-97-070 :
:

This is a decision on the petition filed on 5 December, 2005, under 37 CFR 1.137(b), [1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 15 June, 2005, for failure to timely submit a reply to the Notice of Appeal filed on 14 April, 2005, which set a two (2) month shortened period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 6 December, 2005.

---

[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 a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The 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)).

Petitioner has filed a Request for Continued Examination (RCE) and an amendment as the required reply under 37 CFR 1.114.

This application is being referred to Technology Center 3623 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
Senior 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)
6118390	2000-09-12	08948648	1997-10-10	2999-101

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	/Monica Chin Kitts/	Date (YYYY-MM-DD)	2009-02-10
Name	Monica Chin Kitts	Registration Number	36105

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. 6456852
Issue Date: September 24,2002
Application No. 08948713
Filed: October 10,1997
Attorney Docket No. USW-104

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

This is a decision on the electronic petition, filed May 4,2007 ,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 May 4,2007 . 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)
6456852	2002-09-24	08948713	1997-10-10	CS19298

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	/Hisashi D. Watanabe/	Date (YYYY-MM-DD)	2007-05-04
Name	HISASHI D. WATANABE	Registration Number	37465

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.

NOTICE RE: CERTIFICATES OF CORRECTION

DATE : 9-12-01

TO : Supervisor, Art Unit 2724

SUBJECT: Certificate of Correction Request in Patent No. 6052490

A response to the following question(s) is requested with respect to the accompanying request for a certificate of correcti

☑ 1. Would the change(s) requested under 37 CFR 1.323 constitute new matter or require reexamination of th

☑ 2. Would the change(s) requested under 37 CFR 1.323 Materially affect the scope or meaning of the claims by the examiner in the patent?

☐ 3. Applicant disagrees with change(s) initialed and dated by Examiner in lieu of an Examiner's Amendmen the change request be granted?

☐ 4. With respect to the change(s) requested, correcting Office errors, should the patent read as shown in the 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 ROOM 918, PK III

Eric James E. James

Legal Instrument Examiner

Please do not send to Warehouse Thanks

TO: CERTIFICATE OF CORRECTION BRANCH | 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	PUBLISH
☐ 3.YES	☐ NO	☐ Comments below	
☐ 4.YES	☐ NO	☐ Comments below	
☐ 5.YES	☐ NO	☐ Comments below	APPROVED

☐ Comments _____

NOV 14 2001

Bernadette S. Green

FOR THE COMMISSIONER OF PATENTS AND TRADEMARKS

Approved

Olik Chaudhuri OC

Supervisory Patent Examiner

Technology Center 2600 Supervisor

Art Unit

PTOL-306 (REV. 10/87) U.S. DEPARTMENT OF COMMERCE Patent and T

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. 5999636
Issue Date: December 7,1999
Application No. 08949012
Filed: October 10,1997
Attorney Docket No.

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

This is a decision on the electronic petition, filed January 26,2008 ,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 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)
5999636	1999-12-07	08949012	1997-10-10	

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	/Ruddy J. Juang/	Date (YYYY-MM-DD)	2008-01-26
Name	Ruddy J. Juang		

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. 5970475
Issue Date: October 19,1999
Application No. 08949182
Filed: October 10,1997
Attorney Docket No. INTELISYS-P1

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

This is a decision on the electronic petition, filed July 8,2008 ,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 8,2008 . 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)
5,970,475	1999-10-19	08/949,182	1997-10-10	Westpac.0001

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	/ Jonathan T. Kaplan /	Date (YYYY-MM-DD)	2008-07-08
Name	Jonathan T. Kaplan	Registration Number	38935

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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STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

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JAN 16 2008

OFFICE OF PETITIONS

In re Patent No. 5,963,281 :
Issue Date: October 5, 1999 :
Application No. 08/949,357 : NOTICE
Filed: October 14, 1997 :
Attorney Docket No. RDI-111 :

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : October 18,2007

TO SPE OF : ART UNIT 2853

SUBJECT : Request for Certificate of Correction for Appl. No.: 08/949,529 Patent No.: 6059400

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: OK

STEPHEN MEIER
SUPERVISORY PATENT EXAMINER

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)
5969579	1999-10-19	08949641	1997-10-17	7312

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	/Adam A Bennett/	Date (YYYY-MM-DD)	2008-08-19
Name	Adam A. Bennett	Registration Number	57849

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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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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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In re Patent No. 5969579
Issue Date: October 19,1999
Application No. 08949641
Filed: October 17,1997
Attorney Docket No. 7312

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

This is a decision on the electronic petition, filed August 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 August 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 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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Paper No. 20

STEVEN R LAZAR
GENETICS INSTITUTE INC
87 CAMBRIDGE PARK DR
CAMBRIDGE , MA 02140

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MAR 1 4 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of
Lavallie, et al.
Application No. 08/949,904
Filed: October 15, 1997
Attorney Docket No. GI-5288B

DECISION ON PETITION

This is a decision on the petition filed on February 16, 2001, pursuant to 37 C.F.R. §1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action mailed April 27, 1999, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time for under the provisions of 37 CFR 1.136(a) was obtained. On October 28, 1999 (certificate of facsimile transmission October 27, 1999), petitioner submitted an amendment in response to the final Office action of April 27, 1999; however, the amendment did not prima facie place the application in condition for allowance. Accordingly, the above-identified application became abandoned on October 28, 1999. A Notice of Abandonment was mailed on August 11, 2000.

With the instant petition, petitioner filed a Notice of Appeal (with fee) in reply to the final Office action, and met all other requirements for a grantable petition under 37 C.F.R. §1.137(b).

Please be advised that the two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 C.F.R. §1.17(c)), runs from the date of this decision.

There is no indication that the person signing the present petition was ever given a power of attorney to prosecute the instant application. Moreover, the application does not indicate a change of address has been filed in the case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation and change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

The application file is being returned to Technology Center 1600 for further processing.

Telephone inquiries specific to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

Christina Y. Tartera for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Ellen J. Kapinos
American Home Products Corporation
Patent Dept - 2B
One Campus Drive
Parsippany, NJ 07054

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CHOATE, HALL & STEWART
TWO INTERNATIONAL PLACE
BOSTON, MA 02110

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OFFICE OF PETITIONS

In re Patent No. 6,825,169 :
Issue Date: November 30, 2004 :
Application No. 08/950,542 : ON PETITION
Filed: October 15, 1997 :
Attorney Docket No. 2002941-0051 :

This is a decision on the petition filed July 1, 2005, 37 CFR 3.81(b)[1] to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is granted.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3208. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Karen Creasy

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

[1]See Official Gazette of June 22, 2004

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BLOOMFIELD HILLS, MI 48303

Paper No. 19

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APR 0 1 2003

Director's Office
Group 3700

In re Application of
UEMURA ET AL.
Application No.: 08/950,826
Filed: October 15, 1997

DECISION ON REQUEST TO WITHDRAW HOLDING OF ABANDONMENT

This application is before the Director of Technology Center 3700 for reconsideration of the Notice of Abandonment mailed February 21, 2002, for failure to respond to the Office Action mailed August 10, 2001. The petition, filed March 11, 2002, requests review of the holding of abandonment and provides supporting documentation that the appropriate response and fees were, in fact, timely mailed to the Office.

A review of the file history indicates that a request for a two month extension of time and a response (a Notice of Appeal and fee) were timely filed on February 20, 2002 (Certificate of Mailing dated January 2, 2002) and have now been associated with the file. Moreover, the Appeal Brief also appears in the file as timely filed (Certificate of Mailing dated March 4, 2002). All appropriate fees have been submitted on time and have been charged to the application.

In view of the above, the Notice of Abandonment mailed February 21, 2002 is in error and is hereby vacated. The holding of abandonment is withdrawn. This application is being forwarded to the examiner for appropriate action not inconsistent with this decision.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch, Director
Technology Center 3700
Telephone 703-308-1272

DAS

,UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

Foley & Lardner LLP
P.O. Box 80278
San Diego, CA 92138-0278

In re Application of :
Joel A. Drewes, et al. :
Application No. 08/950,963 : DECISION ON PETITION
Filed: October 15, 1997 : TO WITHDRAW
Attorney Docket No. 074022-3302 : 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 Richard J. Warburg, on behalf of himself and all attornerys of record. All attorneys/agents have been withdrawn.

Applicant is reminded that there is no attorney of record at this time and all future correspondence will be directed to the first named inventor Joel Drewes at the address indicated below.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named inventor; or (2) the assignee of the entire interest. All future communications from the Office will be directed to the first named inventor or the assignee of the entire interest under 37 C.F.R. 3.71 at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (571)272-3213.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

Conferee: Denise Pothier

cc: Joel A. Drewes
14867 Buttonwood Court
Woodbridge, VA 22193

cc: Swanson & Bratschun L.L.C.
1745 Shea Center Drive
Suite 330
Highlands Ranch, CO 80129

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)
6,532,022	2003-03-11	08/951,089	1997-10-15	ELECP001

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	/Lee Van Pelt/	Date (YYYY-MM-DD)	2007-06-07
Name	Lee Van Pelt	Registration Number	38352

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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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. 6532022
Issue Date: March 11,2003
Application No. 08951089
Filed: October 15,1997
Attorney Docket No. ELECP001

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

This is a decision on the electronic petition, filed June 7,2007 ,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 June 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 DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, DC 20231

MAY 2 4 2001

RJH
Paper No. 19

In re Application of:
PRICE, DAVID H.
Serial No.: 08/951,188
Filed: October 15, 1997
For: P-TEFB Compositions, Methods and Screening Assays

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed November 17, 2000, to withdraw the finality of the October 11, 2000 Office action.

On January 9, 2000, a final rejection was mailed to applicant. On February 3, 2000, applicant filed a letter requesting withdrawal of the finality of the January 9, 2000 Office action. On October 11, 2000, another final rejection was mailed to applicant. In that Office action, the examiner said: "Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. Accordingly, this Office action is now made final." The rest of the Office action was a repeat of the January 9, 2000 Office action. On November 17, 2000, the present petition was filed. Subsequent to November 17, 2000, Robert Hill, Quality Assurance Specialist of Technology Center 1600, contacted applicant's representative, Dr. Shelley Fussey, and indicated that the status of the application was not known. Specifically, Mr. Hill indicated that withdrawal of finality of the January 9, 2000 Office action would not have relieved applicant of his responsibility to respond to that Office action in a timely manner and since no response was filed, the application may be abandoned. Mr. Hill indicated that he would speak with the examiner to find out what he said to Dr. Fussey regarding responding to the January 9, 2000 Office action. Mr. Hill also indicated that there was no need to respond to the October 11, 2000 Office action until the status of the application was resolved. In a letter filed on April 13, 2001, Dr. Fussey provided her account of what happened in this application. Mr. Hill discussed the situation with the examiner who did indicate that during the pendency of the application following the January 9, 2000 Office action, he told Dr. Fussey that the finality of that Office action would be withdrawn and that he would send another Office action. (The examiner did not realize at the time that there was no need to send another Office action; only the finality of the January 9, 2000 Office action needed to be removed.)

Based on the record of this case as set forth above and coupled with the April 13, 2001 letter, it is clear that there was confusion on applicant's part as well as on the examiner's part as to whether

applicant was required to respond to the January 9, 2000 Office action. In view of this confusion, it is fair and reasonable in this case not to hold the application abandoned for failure to respond to the January 9, 2000 Office action. Furthermore, in view of the fact that there was confusion as to the status of the application following the October 11, 2000 Office action, it is fair and reasonable in this case not to hold the application abandoned for failure to respond to the October 11, 2000 Office action. Consequently, this application is considered by the Office to be properly pending at this point in time.

Lastly, applicant has not yet had the chance to respond to the Office action of January 9, 2000, repeated on October 11, 2000. Therefore, the finality of the October 11, 2000 Office action is hereby withdrawn and the time for responding to that Office action is hereby reset to expire three (3) months from the date of this decision. Failure to respond to that Office action within this period for response will cause the application to become abandoned. (35 U.S.C. §133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

PETITION GRANTED.

Jasemine C. Chambers

Jasemine Chambers, Director
Technology Center 1600

SHELLEY P.M. FUSSEY
WILLIAMS, MORGAN & AMERSON,P.C.
7676 HILLMONT, SUITE 250
HOUSTON, TX 77040

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 19

RICHMOND HITCHCOCK FISH AND DOLLAR
P O BOX 2443
BARTLESVILLE OK 74005

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JUN 2 7 2002

OFFICE OF PETITIONS

In re Application of :
Woodard, et al. : DECISION ON PETITION
Application No. 08/951,201 :
Filed: October 14, 1997 :
Attorney Docket No. 33470US :

This is a decision on the petition filed April 2, 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 file an Appeal Brief (and fee) within the time period provided in 37 CFR 1.192(a). A final Office action was mailed on November 18, 1999, which set a shortened statutory period for reply of three (3) months. Petitioner obtained a two month extension of time and replied with an Amendment and a Notice of Appeal on April 18, 2000. However, by Advisory Action mailed May 15, 2000, the examiner informed petitioner that the Amendment would not be entered. Accordingly, the two month period of time (extendable under 37 CFR 1.136(a)) for filing the Appeal Brief started to run from April 18, 2000. No Appeal Brief having been filed and no further extensions of time having been received, the above-identified application became abandoned on June 19, 2000. A Notice of Abandonment was mailed on January 30, 2001.

With the instant petition, the petitioner filed a request for a continued prosecution application (CPA) of the above-identified application under 37 CFR 1.53(d), and met all other requirements for a grantable petition under 37 CFR 1.137(b). The above-identified application is again abandoned in favor of the CPA, filed September 10, 2001.

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

The application file is being forwarded to Technology Center 1700 for processing of the CPA, filed April 2, 2002.

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

cc: Charles W. Stewart
1301 McKinney
Room 3446
Houston, Texas 77010

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 21

MARK P. STONE
1100 High Ridge Road
Stamford, CT 06905

NOV 19 2003

In re Application of:
David G. McCarthy
Serial No.: 08/951,276
Filed: October 16, 1997
Attorney Docket No.: 402-038-19

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.181, filed on April 15, 2003.

The petition is DENIED.

The petitioner requests that the decision in the Official Action dated March 7, 2003 be vacated.

A review of the record indicates that the Board of Patent Appeals and Interferences (BPAI) only adjudicated the matter of the rejection under 35 USC §112, 1st paragraph. The BPAI never adjudicated the rejection of the claims over prior art.

While the art rejection was withdrawn prior to the decision by the BPAI, no where in the record is it indicated that the claims were allowable over the prior art of record.

The Examiner has reopened prosecution and properly rejected the claims on new grounds, albeit using the same prior art, as pointed out by the petitioner. 37 CFR 1.198 states "Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of 37 CFR 1.114 or 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown." It is our contention that the new grounds of rejection under 35 USC §103 show sufficient cause to warrant the reopening of prosecution.

Accordingly, the petition is denied.

Inquiries regarding this decision should be directed to Paula Bradley at (703) 308-2319.

The case will be forwarded to Examiner Hammond.

Richard K. Seidel, Director
Technology Center 2800
Semiconductors, Electrical and
Optical Systems, and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARK P STONE
25 Third Street
4th floor
Stamford CT 06905

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OFFICE OF PETITIONS

In re Application of:
David G. McCarthy
Application No.: 08/951,276
Filed: October 16, 1997
For: RETRACTABLE RECEPTACLE FOR FURNITURE

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a)(3) filed on December 11, 2003, invoking the supervisory authority of the Director to review the decision of the Group Director of Technology Center 2800 (Group Director), which decision refused to vacate the reopening of prosecution subsequent to the decision of the Board of Patent Appeals and Interferences.

The petition under 37 CFR 1.181(a)(3) to vacate the reopening of prosecution subsequent to the decision of the Board of Patent Appeals and Interferences is **DENIED**.

BACKGROUND

The final rejection of August 31, 1999, included: (1) a rejection of claims 1 through 20 under 35 U.S.C. § 112, first paragraph as containing subject matter not described in the specification; (2) a rejection of claims 1, 2 , 6, and 16, as anticipated under 35 U.S.C. § 102(b) by U.S. Patent No. 4,747,788; (3) a rejection of claims 19 and 20 as anticipated by U.S. Patent No. 4,511,198; and (4) a rejection of claims 3 through 5, 7 through 16, and 17, 18 under 35 U.S.C. § 103(a) over U.S. 4,747,788.

On December 2, 1999, applicant filed a notice of appeal, followed on January 19, 2000 by applicant's brief on appeal. On April 11, 2000, the examiner's answer was mailed. The examiner's answer expressly withdrew the grounds of rejection under 35 U.S.C. §§ 102, 103, but maintained the rejection under 35 U.S.C. § 112, first paragraph.

On October 31, 2002, the Board of Patent Appeals and Interferences issued a decision that noted (at 2) that the rejections under 35 U.S.C. §§ 102, 103 had been withdrawn by the examiner, and reversed the rejection of claims 1 through 20 under 35 U.S.C. § 112 first paragraph.

On March 7, 2003, an Office action was mailed which reopened prosecution by re-applying the prior art references that had been previously employed in the final rejection and then withdrawn in the examiner's answer. The Office action (at 7) was signed, *inter alia*, by the Group Director.

On April 15, 2003 applicant filed a petition seeking that the reopening of prosecution by the Office action of March 7, 2003, be vacated on the grounds that such lacked compliance with 37 CFR 1.198. On December 11,2003, the Group Director denied the petition on the grounds that the contested reopening was authorized under the terms of 37 CFR 1.198.

The instant petition was filed December 11, 2003.

REGULATION AND EXAMINING PROCEDURE[1]

37 CFR 1.198 provides that:

> Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

MPEP 1214.04 states in pertinent part:

> If the examiner has specific knowledge of the existence of a particular reference or references which indicate nonpatentability of any of the appealed claims as to which the examiner was reversed, he or she should submit the matter to the Technology Center (TC) Director for authorization to reopen prosecution under 37 CFR 1.198 for the purpose of entering the new rejection. See MPEP § 1002.02(c) and MPEP § 1214.07. The TC Director's approval is placed on the action reopening prosecution.

[1] Manual of Patent Examining Procedure ("MPEP") (8th ed 2001) (Rev. 2, May 2004)

DECISION

Petitioner contends that as the examiner had withdrawn all rejections of the claims over the same prior art references, coupled with the fact that the examiner permitted the appeal to be decided only on the formal grounds *i.e.*, the rejection based on 35 U.S.C. § 112, first paragraph, "is at the least, an implicit admission" by the examiner that the claims are considered allowable over that prior art. Petitioner further complains that the decision fails to provide any explanation why the current grounds of rejection were not made by the examiner prior to the decision by the Board of Patent Appeals and Interferences (BPAI). Petitioner further contends that the re-application of the previously applied, and withdrawn, references, "violates 37 CFR 1.198."

While it is unfortunate that the examiner did not present the current rejections over the same prior art references, such that the BPAI could have all issues before it when the decision of October 31, 2002 was rendered, the reopening of prosecution herein is neither improper under nor inconsistent with 37 CFR 1.198.

The record shows that the prior art-based rejections in the final Office action of August 31, 1999 were not carried forward into the examiner's answer of April 11, 2000. Therefore, the BPAI treated the prior art-based rejections as withdrawn and not before the BPAI for review. See Ex parte Emm, 118 USPQ 180, 181 (Bd. Pat. App. 1957).[2] The instant situation is akin to the situation in In re Freeman, 166 F.2d 178, 76 USPQ 585 (CCPA 1948), in which: (1) the examiner rejected claims in the application on the basis of (*inter alia*) double patenting; (2) the double patenting rejection was withdrawn by the examiner before the application was forward to the Board of Appeals for a decision on the remaining rejections; (3) the Board of Appeals sustained the rejection of some claims but reversed the rejection of other claims; and (4) the examiner obtained approval to reopen prosecution for the purpose of rejecting claims in the application on the basis of (*inter alia*) double patenting. In response to arguments similar to those being made by petitioner, the CCPA indicated that the fact that the examiner withdrew the double patenting rejection prior to the initial appeal does not preclude the examiner from reopening prosecution (upon obtaining the appropriate approval) and rejecting the claims on the basis of double patenting. See Freeman, 166 F.2d at 179-80, 76 USPQ at 586. Therefore, that the examiner withdrew the prior art-based rejections in the final Office action of August 31, 1999 does not preclude the examiner from obtaining approval to reopen prosecution under 37 CFR 1.198 for the purpose of entering the previously withdrawn prior art based rejections of the claims.

The authority to permit the reopening of prosecution subsequent to a decision by the BPAI under 37 CFR 1.198 has been delegated to the Group Director. See MPEP 1002.02(c), ¶ 1. The Office action that reopened prosecution was signed by the Group Director, thus indicating that the

---

[2] Inasmuch as the prior art-based rejections were not before the BPAI for review , these rejections have not already been adjudicated by the BPAI, by "default" or otherwise.

Group Director approved the examiner's request to reopen prosecution in the above-identified application. It is well established that if there is any substantial, reasonable ground within the knowledge or cognizance of the Director why the application should not issue, the Director has the duty, much less the authority, to refuse to issue the application. See In re Drawbaugh, 9 App. D.C. 219, 240 (D.C. Cir 1896). The questions of patentability set forth in the Office action of March 7, 2003 are "sufficient cause" for reopening prosecution in the above-identified application under 37 CFR 1.198.

CONCLUSION

The instant petition is granted to the extent that the decision of the Group Director has been reviewed, but is **denied** as to making any change therein. As the reopening of prosecution in the above-identified application was consistent with 37 CFR 1.198, the Group Director's refusal to vacate the reopening of prosecution subsequent to the decision of the Board of Patent Appeals and Interferences will **not** be disturbed.

Telephone inquiries concerning this decision may be directed to Petitions Examiner Brian Hearn at (571) 272-3217.

Stephen G. Kunin
Deputy Commissioner
for Patent Examination Policy

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Paper No.

MARK P. STONE
1100 High Ridge Road
Stamford, CT 06905

NOV 19 2003

In re Application of:
David G. McCarthy
Serial No.: 08/951,276
Filed:.October 16, 1997
Attorney Docket No.: 402-038-19

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.181, filed on April 15, 2003.

The petition is DENIED.

The petitioner requests that the decision in the Official Action dated March 7, 2003 be vacated.

A review of the record indicates that the Board of Patent Appeals and Interferences (BPAI) only adjudicated the matter of the rejection under 35 USC §112, 1st paragraph. The BPAI never adjudicated the rejection of the claims over prior art.

While the art rejection was withdrawn prior to the decision by the BPAI, no where in the record is it indicated that the claims were allowable over the prior art of record.

The Examiner has reopened prosecution and properly rejected the claims on new grounds, albeit using the same prior art, as pointed out by the petitioner. 37 CFR 1.198 states "Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of 37 CFR 1.114 or 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown." It is our contention that the new grounds of rejection under 35 USC §103 show sufficient cause to warrant the reopening of prosecution.

Accordingly, the petition is denied.

Inquiries regarding this decision should be directed to Paula Bradley at (703) 308-2319.

The case will be forwarded to Examiner Hammond.

Richard K. Seidel, Director
Technology Center 2800
Semiconductors, Electrical and
Optical Systems, and Components

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ONE AMGEN CENTER DRIVE
THOUSAND OAKS CA 91320-1799

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OFFICE OF PETITIONS

In re Application of	:	
Harrington et al.	:	
Application No. 08/951,733	:	ON PETITION
Filed: October 16, 1997	:	
Attorney Docket No. 01017/42148	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 14, 2007, to revive the above-identified application.

The petition is **GRANTED.**

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

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

This matter is being referred to Technology Center 1600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

Cc:

MARSHALL, GERSTEIN & BORUN, LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606-6357

UNITED STATES PATENT AND TRADEMARK OFFICE

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ATTN: LEGAL-MANUFACTURING
KINETIC CONCEPTS, INC.
P.O. BOX 659508
SAN ANTONIO TX 78265-9508

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OFFICE OF PETITIONS

In re Application of	:	
Lina et al.	:	
Application No. 08/951,832	:	ON PETITION
Filed: October 16, 1997	:	
Attorney Docket No. VAC.312B.US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 3, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

The file is being forwarded to Technology Center 3700 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
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, DC 20231
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MAILED

JUL 24 2003

Office of the Director
Group 3600

Garth Janke
Birdwell, Janke & Durando, PLC
1100 SW Sixth Avenue, Suite 1400
Portland, OR 97024

In re application of
Ronald L. Carr
Application No. 08/952,001
Filed: November 7, 1997
For: JOINT ASSEMBLY EMPLOYING MULTI-RING GASKET

DECISION ON PETITION
TO RESET A PERIOD
FOR REPLY

This is in reply to the Petition to Reset a Period for Reply, received in the Patent and Trademark Office on April 7, 2003.

The petition is **GRANTED**.

A review of the file record reveals that an Examiner's Answer was mailed on January 31, 2003. Appellant alleges that the Examiner's Answer was mailed to an incorrect correspondence address.

A further review of the file reveals that a copy of the change of address which bears a Certificate of Mailing date of October 21, 2002 was faxed to the Office on March 14, 2003. Therefore, the Office communication of January 31, 2003 was improperly sent to an incorrect address of record. The Office communication of January 31, 2003 was remailed to the updated correspondence address; however, that communication was not redated. Thus, appellant's time to file a reply brief continued to run from the original mail date of January 31, 2003. In view of this error, the petition is **GRANTED**.

Accordingly, appellant may file a reply brief to the Examiner's Answer within two months from the date of this decision.

Kenneth J. Dorner, Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866
(703) 605-0586 (facsimile)

KJD/tpl: 7/10/03

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)
5,962,856	1999-10-05	08/952,325	1998-04-06	SHSC 2 00003

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 S. Zanghi/	Date (YYYY-MM-DD)	2008-08-27
Name	John S. Zanghi	Registration Number	48843

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. 5962856
Issue Date: October 5,1999
Application No. 08952325
Filed: April 6,1998
Attorney Docket No. SMB-2-725

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

This is a decision on the electronic petition, filed August 27,2008 ,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 August 27,2008 . 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
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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 19 2001

Paper No. #11

Owen J. Bates
ALZA Corporation
1900 Charleston Road
Mountain View CA 94043

In re Application of	:	DECISION ON PETITION
J. Bradley Phipps et al	:	TO WITHDRAW
Serial No. : 08/952,368	:	HOLDING OF
Filed : November 17, 1997	:	ABANDONMENT
For : Electrotransport Agent Delivery Method and Apparatus	:	

This is a decision on petitioner's request filed January 10, 2001 to review the holding of abandonment mailed November 27, 2000 for failure to respond to the Office action mailed July 28, 1999. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response, a copy of a three-month extension of time request, and a copy of a PTO stamped receipt dated February 7, 2000 (certificate of mailing dated January 28, 2000). It is noted that the original response has been found and is now in the file. Any inconvenience is respectfully regretted.

In view of the above, the Notice of Abandonment mailed November 27, 2000 is in error and is hereby vacated. The holding of abandonment is withdrawn. Upon the mailing of this decision, the application will be forwarded to the Examiner via the Legal Instruments Examiner for entry and consideration of the response filed February 7, 2000.

Summary: Holding of Abandonment Withdrawn.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (703) 308-0873

ak/3/6/01

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. 21

Oblon, Spivak, McClelland, Maier & Neustadt
Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202

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FEB 27 2002

OFFICE OF PETITIONS

In re Patent No. 6,077,504 :
Issue Date: June 20, 2000 :
Application No. 08/952,820 : ON PETITION
Filed: January 27, 1998 :
Attorney Docket No. 6009-011-0 PCT :

This is a decision on the petition under 37 CFR 1.182, filed February 06, 2001, requesting issuance of duplicate Letters Patent for the above-identified application.

The petition is granted.

The Publishing Division is directed to issue duplicate Letters Patent.

Any questions concerning this decision may be directed to the undersigned at (703) 306-3475. Any questions regarding the duplicate Letters Patent may be directed to the Publishing Division at (703) 305-8283.

A copy of this decision is being forwarded to the Publishing Division for issuance of duplicate Letters Patent.

The patent file is being forwarded to the Files Repository.

CERTIFICATE
MAR 06 2002
OF CORRECTION

Marianne E. Morgan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Charmaine Jackson, Crystal Park 3-920
Kimberly Terrell, Crystal Park 3-910

Grant mailed 12/3/02 K.S.

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 20

JOHN P DELUCA
DYKEMA GOSSETT
THIRD FLOOR WEST
1300 I STREET NW
WASHINGTON, DC 20005

COPY MAILED

APR 2 7 2001

OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Mats Leijon et al. :
Application No. 08/952,990 : ON PETITION
Filed: April 9, 1998 :
Attorney Docket No. 8238 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 16, 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 May 26, 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. See 37 CFR 1.192(b) & 1.197(c). As no claim was allowed, the-above-identified application became abandoned on July 27, 2000. See MPEP 1215.04.

The above-identified application is being revived solely for purposes of continuity with a continued prosecution application (CPA) filed on March 16, 2001.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

The application file is being forwarded to Technology Center 2800.

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

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Paper No. 30

John P. De Luca
DYKEMA GOSSETT PLLC
1300 I Street N.W.
Washington, D.C. 20005

NOV - 6 2002

In re Application of	:	
LEIJON et al.	:	DECISION
Application No. 08/952,990	:	ON PETITION
Filed: April 09, 1998	:	
Attorney Docket No. 66291-175-2	:	

This is a decision on the petition, filed August 08, 2002 requesting that the prosecution in the above-identified patent application be suspended for a period of six months under 37 C.F.R. § 1.103(a), and an additional six months, pursuant to MPEP § 1002.02(c)9, for a total of twelve months, beginning with the filing of the subject Petition.

Regarding a suspension on request of the applicant, 37 CFR 1.103(a) provides:

> (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

In the Request, to establish cause, Petitioner asserts the claims and issues of the instant application are relevant to the claims and issues in at least U.S. Application No. 08/973,019 which Petitioner has appealed. Further, because the appeal of '019 will materially affect the prosecution of the instant application, the instant application should be suspended pending the decision on appeal of '019.

A review of the record indicates the instant application has claims and issues that are relevant to appealed case '019 . The claims in the instant application and appealed case '019 are both directed toward the particular structure of the high voltage cable. Consequently, since the

outcome of appealed case '019 will materially affect prosecution of the instant application, good and sufficient reasons have been demonstrated to warrant suspension of action.

Accordingly, the petition to suspend prosecution is GRANTED for a period of up to twelve (12) months starting from the filing of petition, August 08, 2002.

Inquiries regarding this decision should be directed to Richard Seidel at (703) 306-3431.

Richard Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components