UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 13

FAEGRE & BENSON LLP
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(For Patent Owner)

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400 Locust Street, Suite 200
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(For Requester)

MAILED

APR 14 2003

REEXAM UNIT

In re reissue application of
Boatman, et al.,
Application No. 09/833,269
Filed: April 5, 2001
For: U.S. Patent No. 5,892,690

In re Boatman, et al.,
Reexamination Proceeding
Control No. 90/006,386
Filed: September 18, 2002
For: U.S. Patent No. 5,892,690

DECISION *SUA SPONTE* MERGING REEXAMINATION AND REISSUE PROCEEDINGS

The above-identified reissue application and reexamination proceeding are before the Office of Patent Legal Administration for consideration of whether the proceedings should be merged at this time.

REVIEW OF FACTS

1. U.S. Patent No. 5,892,690 issued to Boatman, et al., on April 6, 1999.

2. Patent owner filed a reissue application based on the '690 patent, on April 5, 2001, which was assigned Application No. 09/833,269. Claims 21-76 were added.

3. Notice of the filing of the reissue application was published in the *Official Gazette* on July 17, 2001.

4. On November 27, 2001, a non-final Office action was mailed in the reissue application.

5. A response to the Office action was filed on January 17, 2002.

6. A request for reexamination of the '690 patent was filed by a third party requester on September 18, 2002, and the resulting reexamination proceeding was assigned Control No. 90/006,386.

7. On September 23, 2002, a non-final Office action was mailed in the reissue application.

8. On December 2, 2002, reexamination was ordered in the '6386 proceeding.

9. A response, including an amendment of claims 1, 16, 27, 32 and 53, was filed on January 14, 2003, in the reissue application.

DISCUSSION REGARDING MERGER

Under 37 C.F.R. § 1.565(d):

> (d) If a reissue application and a reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to stay one of the two proceedings....

As evidenced by the above review of facts, the reissue application and the reexamination proceeding are currently pending. Since the Order has been mailed pursuant to § 1.525 in the '6386 reexamination proceeding, a decision under § 1.565(d) is timely.

The general policy of the Office is that examination of reissue and reexamination proceedings will not be conducted separately and at the same time for a single patent. The reason for this policy is to prevent inconsistent, and possibly conflicting, amendments from being introduced into the multiple proceedings on behalf of the patent owner. Normally, the proceedings will be merged when it is desirable to do so in the interest of expediting the prosecution of all of the proceedings. In making a decision on whether or not to merge the multiple proceedings, consideration will be given to the status of each proceeding. See MPEP 2285.

A review of the prosecution history of the '6386 reexamination file shows that no amendments were made in the reexamination file.

A review of the reissue (Application No. 09/833,269) prosecution history shows that the reissue application was published in the *Official Gazette* on July 17, 2001. A non-final Office action was mailed on September 23, 2002, and a response was filed on January 14, 2003. In the reissue application, patent owner has added claims 21-76. Therefore, the claims are **not** identical in both proceedings. It should be noted that the amendment of claims 1, 16, 27, 32 and 53, filed on January 14, 2003, in the reissue application, is **not** in the proper format for reissue applications, pursuant to 37 C.F.R. § 1.173(b)(2), (c), (d), and

(g), and therefore has **not** been entered. Note that the claim changes need to be made with regard to the original patent text, all new claims must be completely underlined, and the status of all patent claims and all added claims, as well as the support for all claim changes must be indicated on pages separate from the amendment pages. **Note that amendment practice pursuant to 37 C.F.R. § 1.121 does not apply to reissue applications, as specifically indicated in 37 C.F.R. § 1.121(a) and (h).** In order to provide efficient and prompt handling of both proceedings, and to prevent inconsistent and possibly conflicting amendments from being introduced on behalf of the patent owner, it is appropriate that the reissue and the reexamination proceedings be merged and a joint examination be conducted. Accordingly, the examination of the reissue application and the reexamination proceeding will be conducted in accordance with the decision set forth below.

DECISION MERGING THE REISSUE AND REEXAMINATION PROCEEDINGS

I. Merger of Proceedings

The above-identified reissue and reexamination proceedings are merged. A joint examination will be conducted in accordance with the guidelines and requirements which follow.

II. Requirement for Same Amendments in Both Proceedings

The patent owner is required to maintain identical amendments in the reissue application and the reexamination file for purposes of the merged proceeding. The maintenance of identical amendments in both files is required as long as the proceedings remain merged. See 37 C.F.R. § 1.565(d). As noted above with regard to the amendments submitted, the claims are NOT the same in both files. **An appropriate housekeeping amendment is required within ONE (1) MONTH of this decision placing the same amendments in both cases**, specifically, Application No. 09/833,269, and Control Number 90/006,386. The response to the requirement must be limited to placing the same amendments in both cases, and patent owner must **not** address the issues of either of the proceedings in the housekeeping amendment. The housekeeping amendment should be submitted as a single paper, including the identifying data for both files (*i.e*, the reissue Application No.

and the reexamination proceeding Control No.) and a signature, and should be filed in duplicate for entry into each of the reissue and reexamination files. The amendment must be in compliance with 37 C.F.R. § 1.173. Note that a "clean copy" of the amendment is **not** required by this rule.

III. Conduct of the Merged Reissue and Reexamination Proceedings

Because the statutory provisions for reissue application examination include, *inter alia*, provisions equivalent to 35 U.S.C. § 305 relating to the conduct of reexamination proceedings, the merged examination will be conducted on the basis of the rules relating to the broader, reissue application, examination. The examiner will apply the reissue statute, rules, and case law to the merged proceeding.

Each Office action issued by the examiner will take the form of a *single action* which jointly applies to the reissue application and the reexamination proceeding. Each action will contain identifying data *for both of the cases*, i.e, the reissue application and the reexamination proceeding. Each action will be physically entered into both files (which will be maintained as separate files).

Any response by the applicant/patent owner must consist of a single response, with **two copies being filed** for entry in both files, with each of the two copies bearing a signature, and containing identifying data for both of the cases (*i.e*, the reissue Application No. and the reexamination proceeding Control No.).

If the reissue application ultimately matures into a reissue patent, the reexamination proceeding shall be terminated by the grant of the reissue patent, and the reissue patent will serve as the certificate under 37 C.F.R. § 1.570. See MPEP 2285.

If the applicant/patent owner fails to file a timely and appropriate response to any Office action, the merged proceeding will be terminated as follows. The reissue application will be held abandoned, and the merger will be dissolved. With respect to the reexamination proceeding, the Commissioner will proceed to issue a reexamination certificate under § 1.570 in accordance with the last action of the Office, unless further action is clearly needed as a result of the difference in rules relating to reexamination and reissue proceedings.

If the applicant/patent owner files an express abandonment of the reissue application pursuant to 37 C.F.R. § 1.138, the next Office action of the examiner will accept the express abandonment, dissolve the merged proceeding, and continue examination as to the reexamination proceeding. Any grounds of rejection which are not applicable under reexamination would be withdrawn (*e.g.*, based on public use or sale), and any new grounds of rejection which are applicable under reexamination (*e.g.*, improperly broadened claims) would be made by the examiner upon dissolution of the merged proceeding. The existence of any questions/issues remaining which cannot be considered under reexamination following the dissolution would be noted by the examiner as not being proper under reexamination pursuant to 37 C.F.R. § 1.552(c).

CONCLUSION

1. The above-identified reissue application and reexamination proceeding **ARE MERGED** into a single consolidated proceeding.

2. The reissue application file and the reexamination file are being forwarded to the Group Director of Technology Center 2800.

3. The examiner should immediately issue an Office action for the present merged proceeding of the reissue application and reexamination proceeding. All further examination should be conducted in accordance with Parts II and III of this decision.

4. Telephone inquiries related to this decision should be directed to the undersigned at (703) 308-0255.

Lynn M. Kryza

Lynn M. Kryza
Patent Special Projects Advisor
Office of Patent Legal Administration

April 10, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

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MAR 2 1 2002

OFFICE OF PETITIONS

BAXTER HEALTHCARE CORPORATION
P.O. BOX 15210
IRVINE, CA 92614

In re Application of
Laemmle et al.
Application No.: 09/833,328
Filed: April 12, 2001
Attorney Docket No.: R-247.00CIP
For: COMPOSITION EXHIBITING A VON WILLEBRAND FACTION (vWF) PROTEASE ACTIVITY COMPRISING A POLYPEPTIDE CHAIN WITH THE AMINO ACID SEQUENCE AAGGILHLELLV

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed December 24, 2001.

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. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on April 12, 2001 without an executed oath or declaration. Accordingly, on June 22, 2001, a "Notice to File Missing Parts of Nonprovisional Application" (Notice) was mailed, requiring an executed oath or declaration, a surcharge for its late filing, and a paper copy and computer readable of applicants' Sequence Listing, as well as an amendment directing its entry into the application and a statement that the paper copy and the computer readable copy are identical.

In response, on December 24, 2001, a petition for a four month extension of time and required fee, a declaration executed by 9 of 10 joint inventors, the surcharge, the sequence listing submissions, and the instant petition were filed.

A grantable petition under 37 CFR 1.47(a) requires

(1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
(2) a proper oath or Declaration executed by the available joint inventor(s),
(3) the fee of $130 as specified in 37 CFR § 1.17(h), and
(4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventors be provided

with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). The petition does not establish that a complete copy of the application was mailed to Ms. Tagliavacca's last known address. The petition mentions only "declarations and other formal documents to be signed" were sent to the inventors' last known addresses. Ms. Tagliavacca must have the complete application in her possession in order to make an informed decision as to whether she joins in its filing.

In addition, Ms. Tagliavacca's refusal is not apparent. Ms. Tagliavacca's e-Mail of December 18, 2001 intimates that she would be willing to join in the filing of the application. Petitioners should send a copy of the entire application as filed to Ms. Tagliavacca's last known address.

When petitioners can show that Ms. Tagliavacca was mailed or received the complete application and that she either refused to sign the declaration or would not respond to the request that she sign the declaration, petitioners will have satisfied this requirement.

Pursuant to petitioners' authorization, deposit account no. 02-1437 will be charged the $130.00 petition fee.

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 should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

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JUN 07 2002

OFFICE OF PETITIONS

BAXTER HEALTHCARE CORPORATION
P.O. BOX 15210
IRVINE, CA 92614

In re Application of
Laemmle et al.
Application No.: 09/833,328
Filed: April 12, 2001
Attorney Docket No.: R-247.00CIP
For: COMPOSITION EXHIBITING A VON WILLEBRAND FACTION (vWF) PROTEASE ACTIVITY COMPRISING A POLYPEPTIDE CHAIN WITH THE AMINO ACID SEQUENCE AAGGILHLELLV

DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.147(a) MOOT

Papers filed on May 21, 2002 in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on March 21, 2002, included a Declaration signed by the previously nonsigning inventor, Luigina Tagliavacca, in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is moot; this application does not have any rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47(a).

This application will be forwarded to the Office of Initial Patent Examination for further processing.

Inquiries related to this decision may be addressed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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IBM CORP.
C/O CARDINAL LAW GROUP
1603 ORRINGTON AVENUE
SUITE 2000
EVANSTON IL 60201

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OFFICE OF PETITIONS

In re Application of David John Craft et al Application No. 09/833,342 Filed: April 12, 2001 Attorney Docket No. AUS920010088U S1	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed November 4, 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 reply to the nonfinal Office action of January 4, 2005, 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 Technology Center AU 2135.

Karen Creasy

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

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UNITED STATES DEPARTMENT OF COMMERCE
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IBM CORPORATION
INTELLECTUAL PROPERTY LAW
11501 BURNET ROAD
AUSTIN, TX 78758

Mail Date: 04/20/2010

Applicant	: David John Craft	: DECISION ON REQUEST FOR
Patent Number	: 7603703	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/833,342	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/12/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1432** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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TECHNOLOGY CENTER 2600

IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS TX 75380

In re Application of:
Daniel Alan Brokenshire, et al.
Application No. 09/833,348
Filed: April 12, 2001
For: **METHOD AND APPARATUS FOR GENERATING GAMMACORRECTED ANTIALIASED LINES**

DECISION ON PETITION

This is a response to the Petition to Withdraw Holding of Abandonment, filed September 22, 2005. The petition is being treated under 37 CFR 1.8(b) to withdraw the holding of abandonment.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a response to the Final Office action mailed September 24, 2003, which set a shortened statutory period of three (3) months to reply. A Notice of Abandonment was mailed on September 8, 2005.

Petitioner alleges to have timely filed a Notice of Appeal on December 19, 2003 and and an Appeal Brief on February 19, 2004. To support this position, Petitioner has included with the instant petition a copy of an Auto-Reply Facsimile Transmission evidencing receipt of the Notice of Appeal by the PTO on December 19, 2003 and a copy of a date-stamped postcard evidencing receipt of the Appeal Brief by the PTO on February 19, 2004.

A review of the file finds that the original Notice of Appeal was located and matched to the file. However, the originally filed Appeal Brief was not matched with 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 U.S.PTO of all the items listed thereon on the date stamped thereon by the PTO." Accordingly, it is concluded that the Appeal Brief was timely filed in the Patent and Trademark Office but not matched with the application file.

Petitioner has met the requirements 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 Notice of Appeal and Appeal Brief. From there, the file will be forwarded to the examiner for appropriate action in due course.

Krista Zele
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
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Paper No. 9

JEFFERSON PERKINS, ESQUIRE
PIPER MARBURY RUDNICK & WOLFE
P O BOX 64807
CHICAGO, IL 60664-0807

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OFFICE OF PETITIONS

In re Application of	:	
Paul Boieriu et al	:	
Application No. 09/833,363	:	DECISION GRANTING PETITION
Filed: April 12, 2001	:	UNDER 37 CFR 1.137(f)
Attorney Docket No. P-6124	:	

This is a decision on the petition, filed February 20, 3002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on April 12, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until

the filing of a grantable petition was unintentional.

The instant petition has been found in compliance with 37 CFR 1.137(f). However, while the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that "the entire delay in filing the required reply [Notice to Rescind Previous Nonpublication Request Under 35 U.S.C. § 122(b)(2)(B)(ii)] until the filing of a grantable petition was unintentional." Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 U.S.C. § 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of June 5, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 2878 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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WASHINGTON, D.C. 20231
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Paper No. 3

Office of Eugene H. Valet
PMB3
4742 42nd Avenue
Seattle, Washington 98116

In re Application of: G. Triola	)	
Application No. 09/833,390	)	**DECISION ON PETITION**
Filed: April 11, 2001	)	**UNDER M.P.E.P. §708.02(II):**
For: METHOD AND APPARATUS FOR	)	**INFRINGEMENT**
PROCESSING ESCROW	)	
TRANSACTIONS	)	

This is a decision on the petition, filed June 22, 2001, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(II): Infringement, to make the above-identified application special.

A grantable petition under 37 C.F.R. §1.102(c), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(I) and a statement under 37 C.F.R. §1.102 by the applicant or assignee or statements by an attorney/agent registered to practice before the Patent and Trademark Office that (A) there is an infringing device or product actually on the market or method in use; (B) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed: and (C) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the prior art. A fee under 37 C.F.R. for such a petition is required .

Applicant's submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**. The application file is being forwarded to the Examiner of Record for expedited examination.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

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FROM DIRECTORS OFFICE

AUG 1 2 2005

TECHNOLOGY CENTER 3600

Eugene H. Valet
314 10th Ave. South
Edmonds WA 98020-3312

In re Application of: Triola, C. Richard	:	PETITION TO INVOKE
Application No. 09/833,390	:	SUPERVISORY AUTHORITY
Filed: April, 11, 2001	:	UNDER
Attorney Docket No.: CRT044UT	:	37 C.F.R. 1.181
For: METHOD AND APPARATUS FOR	:	
PROCESSING ESCROW TRANSACTIONS	:	

This is a decision on the petition filed on 7/15/05. Applicant requests the Office to withdraw the notification of non-compliant Appeal Brief, and remove the requirement that "applicant must file a complete new brief."

The petition is GRANTED.

Upon review of the notification of the non-compliant appeal brief, it is determined that the primary examiner did indeed incorrectly check box 9. Page 3 of the appeal brief filed 4/7/05 indicates that there are no related appeals or interferences. However, upon further review rule 41.37 (c) requires that the following items must be contained in the brief: Claims appendix, Evidence appendix, and Related proceedings appendix. An appendix with the heading "Related proceeding" is missing from the brief.

Summary

The notification of non-compliant Appeal Brief mailed 7/12/05 is hereby vacated. The application will be forwarded to the examiner to arrange an appeal conference to review the merits of the case. If the result of the appeal conference is to move the case forward to appeal, the examiner will prepare a new notification of non-compliant Appeal Brief and restart the response time since the Appeal Brief does not comply with rule

41.37 (c) i.e. missing an appendix with the heading "Related proceeding." If the result of the appeal conference is not to move the case forward to appeal, the application will be returned to the examiner for further processing. Any questions on this matter should be directed to SPE James Trammell at (571) 272-6712

John J. Love, Director
Patent Technology Center 3600
(571) 272-5250

JT/SM: 8/2/05

SM

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,390	04/11/2001	C. Richard Triola	CRT044UT	3769

36716 7590 05/02/2008
LADAS & PARRY
5670 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES, CA 90036-5679

EXAMINER
TRAMMELL, JAMES P

ART UNIT	PAPER NUMBER
3621	

MAIL DATE	DELIVERY MODE
05/02/2008	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.

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LADAS & PARRY
5670 Wilshire Blvd. Suite 2100
Los Angles, California 90036-5679

In re application of Richard C. Triola Application No. 09/833,390 Filed: April 11, 2001 For: METHOD AND APPARATUS FOR PROCESSING ESCROW TRANSACTIONS	: : : :	**DECISION ON PETITION TO INVOKE SUPERVISORY AUTHORITY UNDER 37 CFR 1.181**

This is in response to the petition filed on December 30, 2005 under 37 CFR 1.181, and the supplement to that petition filed December 30, 2005, to request that Appellants' appeal brief filed August 15, 2005 be entered and that the Notice of Non-Compliant Appeal Brief mailed December 14, 2005 be withdrawn.

The petition is **DISMISSED as MOOT**.

After the filing of a supplemental Appeal Brief on January 17, 2006, this application was issued as U.S. Patent 7,127,406 on October 24, 2006. In light of the issuance, this petition is considered moot and is dismissed.

Any questions regarding this decision should be directed to SPE Andrew Fischer at (571) 272-6779.

Wynn Coggins
Director
Technology Center 3600
(571) 272-5350

Af/snm: 4/25/08

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 1, 2006

TO SPE OF : ART UNIT ~~2611~~ 2612

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/833391 Patent No.: 7,009,515

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

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

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

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

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

Comments: _____

DANIEL WU
SUPERVISORY PATENT EXAMINER
SPE

2612
Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-3-06

TO SPE OF : ART UNIT 2612

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/833,165 Patent No.: 6995652

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 check claims

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

E. Young

Certificates of Correction Branch

703-308-9390 ext. 117

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: _____

MICHAEL HORABIK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

SPE

2612
Art Unit

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

ELENA SHOY
1890 STOCKHOLM
RIDGEWOOD, NY 11385

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JUL 0 8 2005

OFFICE OF PETITIONS

In re Application of :
Shoy & Shoy :
Application No. 09/833,502 : ON PETITION
Filed: April 11, 2001 :
Attorney Docket No. N/A :
For: COSMETIC COMPOSITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 11, 2005 to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the August 9, 2001 non-final Office action which set an extendable three (3) month period for reply. Petitioners obtained a two (2) month extension of time and submitted an amendment on February 3, 2002. However, on that date, a three month extension of time was required. Therefore, the application became abandoned on January 10, 2002, which is day after the 5 month deadline (3 months free plus 2 months bought). The February 3, 2002 amendment was not timely filed. Nevertheless, prosecution continued and the Office mailed a Notice of Non-Compliant Amendment on April 12, 2002. No further timely communication from petitioners was received in the Office. A Notice of Abandonment was mailed on May 21, 2002.

Petitioners have submitted an amendment in reply to the August 9, 2001 non-final Office action, an acceptable statement of the unintentional nature of the delay in responding to the August 9, 2001 non-final Office action, and the petition fee.

The petition is **GRANTED**.

Applicants are informed that Matthew J. Peirce, registration no. 41,245, has been suspended from practice before the U.S. Patent and Trademark Office for a period of two years. OG Notices: 07 June 2005. The instant application contains a power of attorney to Mr. Peirce. The Office does not communication with attorneys who have been suspended or excluded from practice. Accordingly, this decision is being mailed to the address of the inventor first named in the application.

Applicants may, of course, file a new power of attorney in the application to have a registered attorney or agent represent them before the Office. In the absence of an attorney or agent or record, all amendments and other papers filed in the application must be signed by (1) all named

applicants unless one named applicant has been given a power of attorney to sign on behalf of the remaining applicants, and the power of attorney is of record in the application; or (2) if there is an assignee of record of an undivided part interest, by all named applicants retaining an interest and such assignee; or (3) if there is an assignee of the entire interest, by such assignee; or (4) by a registered patent attorney or agent not of record who acts in a representative capacity under the provisions of 37 CFR 1.34(a). The Office will not hold telephone interviews with or send communications to a registered patent attorney or agent who is not of record in the application.

Applicants may obtain a list of registered patent attorneys and agents located in their area by writing to: Mail Stop OED, Director of the U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, or by calling the Office of Enrollment and Discipline at (571) 272-4097.

When Mr. Peirce filed the instant petition, he submitted $75.00 over what was required. The Office will not become involved in financial issues between petitioners and petitioners' former practitioner. The Office will wait for indication as to who a $75.00 refund is owed.

After the mailing of this decision the application will be forwarded to Technology Center 1600's technical support staff for processing the amendment filed on January 11, 2005.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Andrew Curtin
Patent Department
Mitsubishi Electric Research Laboratories, Inc.
201 Broadway, 8th Floor
Cambridge MA 02139

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NOV 22 2005

OFFICE OF PETITIONS

In re Application of :
FRISKEN et al. :
Application No. 09/833,515 :
Filed: April 12, 2001 :
Attorney Docket No. CR-1331 :

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 20, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance and Fee(s) Due, mailed May 20, 2005, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on August 23, 2005.

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was

unintentional. The Director may 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 37 CFR 1.137(d).

The instant petition does not satisfy the above requirement (3) since the statement was unsigned and is therefore unacceptable. See 37 CFR §§ 1.4(d)(1) and 33(b).

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

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

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

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

Denise Pothier

Denise Pothier
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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DEC 23 2005

OFFICE OF PETITIONS

ANDREW J. CURTIN
MITSUBISHI ELECTRIC RESEARCH LABORATORIES, INC
201 BROADWAY, 8TH FLOOR
CAMBRIDGE, MA 02139

In re Application of	:	
FRISKEN et al.	:	DECISION
Application No. 09/833,515	:	ON PETITION
Filed: April 12, 2001	:	
Attorney Docket No. CR-1331	:	

This is a decision on a renewed petition under 37 CFR 1.137(b), filed December 1, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Fee(s) Due, mailed May 20, 2005, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on August 23, 2005.

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 of $1400 and the publication fee of $300; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay have been received. Accordingly, the issue fee and publication fee payments are accepted as having been unintentionally delayed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the petition is being 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 petition.

A duplicate payment of the petition fee, issue fee and publication fee has been made. The fees are unnecessary and will be credited to the petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-4787.

The application matter is being forwarded to Office of Patent Publication.

Denise Pothier
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.g

Date Mailed: September 4, 2008
Patent No. 7,406,309 B2
Ser. No. :09/833593
Inventor(s) :Martin Philip Usher, et al.
Title: CELLULAR RADIO SYSTEM

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 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: (571) 273-0025
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, no additional fee is required.

Magdalene Talley
For Mary F. Diggs, Supervisor
Decisions & Certificates
of Correction Branch
(703) 308-9390 ext. 116

Steptoe & Johnson, LLP
1330 Conn. Ave., NW
Washington, DC 20036

MD/mt

STEPTOE & JOHNSON LLP
1330 CONNECTICUT AVENUE, N.W.
WASHINGTON DC 20036

MAILED

FEB 0 2 2009

OFFICE OF PETITIONS

In re Application of	:	
Martin Philip Usher, et al.	:	
Application No. 09/833,593	:	DECISION ON PETITION
Filed: April 13, 2001	:	
Attorney Docket No. 11696.0059	:	

This is a decision on the petition, filed, September 16, 2008, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the assignee's name on the Fee(s) Transmittal form PTOL-85(b) by way of a certificate of correction in the patent to be issued from the above-identified application.

Comment [1]: Or include or delete

The request is **GRANTED**.

Petitioner states that the correct assignee's name is Stratos Global Limited and that the incorrect assignee's name was included on the Fee(s) Transmittal form PTOL-85(b) at the time of payment of the issue fee. Accordingly, petitioner requests that a certificate of correction be issued to reflect the correct assignee on the front page of the Letters Patent in the patent to be issued from the application.

37 CFR 3.81(b), effective June 25, 2004, reads:

> *After payment of the issue fee:* Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a) and the processing fee set forth in § 1.17(i) of this chapter.

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

The request was accompanied by a certificate of correction (and fee) as required by 3.81(b). Further, Office assignment records reflect that Stratos Global Limited is the assignee of record. Accordingly, 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 after issuance of this application into a patent.

Inquiries concerning this decision should be directed to the April M. Wise at (571) 272-1642. Any questions concerning the issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a certificate of correction after issuance of this application into a patent.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

RICHARD D WEIR
1404 WESSON COVE
CEDAR PARK TX 78613

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DEC 0 8 2003

OFFICE OF PETITIONS

In re Application of
Weir, et al.
Application No. 09/833,609
Filed: April 12, 2001
Docket No. EEStor 100

ON PETITION

This is a decision on the petition to revive under 37 CFR 1.137(b), pursuant to 37 CFR 1.137(f), filed November 10, 2003 (Certificate of Mailing dated November 6, 2003).

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(f)." This is **not** a final agency decision within the meaning of 5 USC 704.

Papers filed in a patent application must be signed by:

(1) A registered attorney or agent of record appointed in compliance with § 1.34(b);
(2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of §1.34(a);
(3) An assignee as provided for under §3.71(b) of this chapter; or
(4) **All of the applicants (§1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with §3.71 of this chapter.**[1]

---

[1] 37 CFR 1.33(b) (emphasis added).

Here, the instant petition was only signed by one of the applicants for patent, Richard D. Weir. The other applicant, Carl Nelson, has not signed the petition. There is no indication in the record that a registered attorney has been appointed in the above identified application. In addition, the record does not reveal that there is an assignee.

Accordingly, until the petition is signed by a party or parties as set forth in 37 CFR 1.33(b), the petition can not be considered on the merits.

Receipt of the $665 petition fee, submitted with the petition, is acknowledged. Accordingly, no futher petition fee need be submitted with the renewed petition.

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: 703-872-9306
Attn: Office of Petitions

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

RICHARD D WEIR
1404 WESSON COVE
CEDAR PARK TX 78613

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JAN 0 9 2004

OFFICE OF PETITIONS

In re Application of
Weir, et al.
Application No. 09/833,609
Filed: April 12, 2001
Docket No. EEStor 100

ON PETITION

This is a decision on the renewed petition to revive under 37 CFR 1.137(b), pursuant to 37 CFR 1.137(f), filed December 22, 2003 (Certificate of Mailing dated December 17, 2003).

The petition is **GRANTED**.

Petitioner states that the instant application is the subject of a PCT international application filed on July 22, 2003. However, the US Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

In view of the above, this application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing which sets forth a projected publication date of April 15, 2004 accompanies this decision.

It is noted that a Notice of Non-Compliant Amendment was mailed on November 13, 2003. The one-month, extendable period for response to that notice is restarted from the mailing date of this decision.

The application file is being forwarded to Technology Center 1700 for restarting the period for reply to the Notice of Non-Compliant Amendment, and to await for applicants' reply to that notice.

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

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing (1 page)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CHARLES E. COHEN
ELI LILLY AND COMPANY
LILLY CORPORATE CENTER
PATENT DIVISION DC: 1104
INDIANAPOLIS, IN 46285

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OCT 3 1 2001

OFFICE OF PETITIONS

In re Application of :
William E. Alborn, Jr., et al. :
Application No. 09/833,647 : ON PETITION
Filed: April 18, 2001 :
For: PROCESS FOR PREPARING LIPID II :

This is a decision on the petition under 37 CFR 1.183 filed August 17, 2001, requesting waiver of the requirement in 37 CFR 1.217(c) that petitioners concurrently submit with a redacted copy of the application, *inter alia*, a certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted.

The petition to waive the requirements of 37 CFR 1.217(c) is **GRANTED** to the extent that petitioners are permitted to concurrently submit an uncertified copy of international application PCT/US 01/12637 with the redacted copy of the above-identified application and subsequently submit the certified copy of international application PCT/US 01/12637 in lieu of concurrently submitting a certified copy of international application PCT/US 01/12637 with the redacted copy of the above-identified application.

Petitioners assert, *inter alia*, that international application PCT/US 01/12637 corresponds to the above-identified application and was filed in the United States Patent and Trademark Office (USPTO) when acting as a PCT Receiving Office, but that petitioners were unable to obtain a certified copy of international application PCT/US 01/12637 from the USPTO within the period set forth in 37 CFR 1.217(a). Petitioners submitted an uncertified copy of international application PCT/US 01/12637 on August 17, 2001 (with the submission otherwise required by 37 CFR 1.217(c)), and submitted a certified copy of international application PCT/US 01/12637 on September 27, 2001.

Under the circumstances of the above-identified application (*i.e.*, the application for which a certified copy is required under 37 CFR 1.217(a) is an application filed in the USPTO when acting

as a PCT Receiving Office), it is appropriate to waive the requirement in 37 CFR 1.217(c) that petitioners concurrently submit a certified copy of international application PCT/US 01/12637.

Telephone inquiries regarding this decision should be directed to Robert W. Bahr at (703) 305-8850.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Robert W. Bahr
Senior Patent Attorney
Office of the Deputy Commissioner
for Patent Examination Policy

rwb

UNITED STATES 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. 17

ELI LILLY AND COMPANY
PATENT DIVISION
P O BOX 6288
INDIANAPOLIS, IN 46206-6288

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JUL 27 2005

OFFICE OF PETITIONS

In re Application of	:	
William Ernest Alborn, Jr. Et al	:	
Application No. 09/833,647	:	DECISION GRANTING PETITION
Filed: April 18, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. X-13166	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 20, 2003, 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 a "Reply Under 37 C.F.R. 1.111 & Amendment under 37 C.F.R. 1.121;" (2) the petition fee of $1,330; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of May 6, 2003 is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 1623 for appropriate action on the reply received December 10, 2003.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-145

JAN 26 2005

MAILED

JAN 26 2005
OFFICE OF THE DIRECTOR
TC 3600

Nixon & Vanherhye P.C.
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714

In re application of
Kenneth E. Gillespie :
Application No. 09/833,654 :
Filed: April 13, 2001 :
For: METHOD AND SYSTEM FOR PROTECTING :
CREDIT CARD TRANSACTIONS

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on July 21, 2004, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. **It should be noted that a withdrawal is effective when approved, not when filed.** Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B), above. In this regard, a proper reason for withdrawal as enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) has not been provided.

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(703) 308-2121

RAR/rwg: 1/15/05

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JUN 18 2003

Paper No. 6

In re Application of
M. Kuntimaddi *et al*
Application No. 09/833,667
Filed: April 13, 2001
Attorney Docket No. 20002.0041

: DECISION ON PETITION

This is a decision on the petition filed on May 27, 2003 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to file a proper reply to the Office letter dated October 2, 2002. No fee is required for the petition.

The petition is granted.

Petitioners allege that this application is not abandoned because the Office letter in question was not received by counsel for petitioners. While petitioners have adequately supported the allegation of nonreceipt of the Office correspondence in a manner which fully satisfies the requirements of the Notice published at 1156 OG 53, it is noted that petitioners have also alleged that a Revocation and Power of Attorney filed on March 20, 2002 has not been properly entered. As a result, the correspondence address and attorney docket number for this application have not been changed. Petitioners have also adequately supported this allegation. It is clear that based upon petitioners' showings, this application is not in fact abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for the following actions:

1. Entry and acknowledgement of the Revocation of Power of Attorney filed on March 20, 2002, a copy of which is attached to the petition.

2. Change of correspondence address and attorney docket number as a result of entry of the Revocation of Power of Attorney.

3. Remailing of paper No. 3, the Office letter dated October 2, 2002 to the correct correspondence address. Any attachments to paper No. 3 will also be re-mailed.

As a result of the remailing of paper No. 3, the period for filing a reply thereto will run ONE MONTH OR THIRTY (30) DAYS, whichever is longer, from the date of the remailing. This period may be extended pursuant to 37 CFR 1.136(a).

PETITION GRANTED.

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

Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW
Suite 300
Washington, DC 20007-5116

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Paper No. 8

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MR. JOHN F. HAYDEN
FISH & RICHARDSON P.C.
1425 K STREET, N.W.
11TH FLOOR
WASHINGTON, D.C. 20005-3500

In re Application of:
Shunpei Yamazaki, et al.
Application No. 09/833,673
Filed: April 13, 2001
For: DISPLAY DEVICE

DECISION ON PETITION

This is in response to the petition filed December 18, 2001, to withdraw the holding of abandonment of the above-identified application.

This application is in abandoned status due to the erroneous processing of a letter of Express Abandonment which was filed in the instant application on October 10, 2001. A Notice of Abandonment was mailed on November 6, 2001.

Petitioner asserts that the letter of Express Abandonment that was filed on October 10, 2001 specifically abandons US application Serial Number 09/819,903 in favor of the instant application.

A review of the letter of Express Abandonment that was filed on October 10, 2001 confirms that copending US application Serial Number 09/819,903 should have been abandoned. The mistake in abandoning the instant application appears to have occurred at least in part because the header information on the letter of Express Abandonment filed October 10, 2001 identified the instant application, rather than the application being expressly abandoned. Inasmuch as the letter of Express Abandonment clearly states in the text of the letter that the instant application is not being abandoned, this application is not abandoned in fact. The Notice of Abandonment is hereby vacated.

The petition is **GRANTED**.

The above-identified application file is being returned to TC 2600 Central Files to await action by the examiner of record in due course.

Joseph J. Rolla, Jr., Director
Technology Center 2600
Communications

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P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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JUN 02 2010

OFFICE OF PETITIONS

In re Application of :
Yamakazi et al. :
Application No. 09/833,674 :
Filed: April 13, 2001 :
Atty. Docket No. 12732-0028001/US4856 :

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is in response to the "Application for Patent Term Adjustment Under 37 C.F.R. § 1.705(b)" filed December 16, 2009. Applicants request the initial determination of patent term adjustment be corrected from one thousand two hundred ninety-four (1294) days to one thousand three hundred sixteen (1316) days.

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

The Office has updated the Office's Patent Application Locating and Monitoring ("PALM") screen to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is 1316 days. A copy of the updated PALM screen showing the correct determination is enclosed.

The Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) on September 17, 2009, advising Applicants of a patent term adjustment to date of 1294 days. In response, Applicants timely filed this application for patent term adjustment and the issue fee on December 16, 2009.

The Office bases patent term calculations on entries in the Office's PALM system. A 22-day reduction in patent term adjustment was entered as a result of an entry in PALM indicating a "Supplemental Response" was filed in this case on June 15, 2006.

Applicants contend the 22-day reduction is improper. Applicants state the attorneys of record did not file a reply on June 15, 2006, and state the Image File Wrapper for the application does not contain any paper filed June 15, 2006.

A review of Office records indicates papers intended for Application No. 09/883, 674 were filed June 15, 2006. As a result of Office error, the Office associated the papers with the instant application. Although the papers were subsequently moved to the correct application file, the Office failed to correct entries involving the papers in PALM. As a result, a 22-day reduction to the patent term adjustment was entered for the instant application.

Papers were not filed in the instant application on June 15, 2006. Therefore, the 22-day reduction was improper and has been removed.
The patent term adjustment as of the date the Office mailed the Notice of Allowance is 1316 days which is 1407 days of Office delay reduced by 91 days of Applicants' delay.

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

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

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

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PALM screen

Day : Monday
Date: 5/31/2010

PALM INTRANET

Time: 09:31:20

PTA Calculations for Application: 09/833674			
Application Filing Date:	04/13/2001	PTO Delay (PTO):	1407
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	113
Post-Issue Petitions:	0	Total PTA (days):	1316
PTO Delay Adjustment:	22		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
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116	09/17/2009	MAIL NOTICE OF ALLOWANCE			
115	09/13/2009	ISSUE REVISION COMPLETED			
114	09/13/2009	DOCUMENT VERIFICATION			
113	09/13/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
112	09/10/2009	EXAMINER'S AMENDMENT COMMUNICATION			
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104	06/04/2009	EMAIL NOTIFICATION			
103	06/04/2009	MAIL BOA MISCELLANEOUS COMMUNICATION TO APPLICANT			
102	06/02/2009	BOA MISCELLANEOUS COMMUNICATION TO APPLICANT			
101	01/22/2009	CONFIRMATION OF HEARING BY APPELLANT			
100	01/20/2009	EMAIL NOTIFICATION			
99	01/20/2009	NOTIFICATION OF APPEAL HEARING			
98	10/29/2008	EMAIL NOTIFICATION			
96	10/29/2008	DOCKETING NOTICE MAILED TO APPELLANT			
95	10/27/2008	ASSIGNMENT OF APPEAL NUMBER			
94	09/26/2008	APPEAL AWAITING BPAI DOCKETING			
93	09/08/2008	EMAIL NOTIFICATION			
92	09/08/2008	MAIL REPLY BRIEF NOTED BY EXAMINER			
91	09/02/2008	REPLY BRIEF NOTED BY EXAMINER			

90	08/03/2008	DATE FORWARDED TO EXAMINER			
89	06/09/2008	REPLY BRIEF FILED			
88	06/09/2008	REQUEST FOR ORAL HEARING			
87	05/09/2008	APPEAL READY FOR BPAI DOCKETING			
86	04/21/2008	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
85	04/17/2008	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
84	04/16/2008	RETURN OF UNDOCKETED APPEAL TO THE TC			
83	04/16/2008	EXAM. ANS. REVIEW COMPLETE			
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81	03/31/2008	EXAMINER'S ANSWER TO APPEAL BRIEF			
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79	03/20/2008	DATE FORWARDED TO EXAMINER			
78	03/07/2008	APPEAL BRIEF FILED			
77	02/12/2008	NOTICE -- DEFECTIVE APPEAL BRIEF			
76	02/08/2008	APPEAL BRIEF REVIEW COMPLETE			
75	02/08/2008	DATE FORWARDED TO EXAMINER			
74.1	01/18/2008	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
74	01/18/2008	APPEAL BRIEF FILED			
73	01/18/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
72	10/25/2007	NOTICE OF APPEAL FILED		61	58
71	10/25/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
70	09/19/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
69	10/15/2007	MAIL ADVISORY ACTION (PTOL - 303)			
68	10/12/2007	ADVISORY ACTION (PTOL-303)			
67	09/28/2007	DATE FORWARDED TO EXAMINER			
66	09/19/2007	AMENDMENT AFTER FINAL REJECTION			
65	09/19/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
64	09/19/2007	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
59	09/19/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	05/25/2007	MAIL FINAL REJECTION (PTOL - 326)			
57	05/24/2007	FINAL REJECTION			

56	03/14/2007	DATE FORWARDED TO EXAMINER			
55	03/12/2007	RESPONSE AFTER NON-FINAL ACTION			
54	12/13/2006	MAIL NON-FINAL REJECTION			
53	12/11/2006	NON-FINAL REJECTION			
52	12/07/2006	DATE FORWARDED TO EXAMINER			
51	11/30/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
50	12/07/2006	DATE FORWARDED TO EXAMINER			
49	11/30/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
48	12/07/2006	DISPOSAL FOR A RCE / CPA / R129			
47	11/30/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
46	09/07/2006	MAIL FINAL REJECTION (PTOL - 326)			
45	09/05/2006	FINAL REJECTION			
44	06/15/2006	NEW OR ADDITIONAL DRAWING FILED			
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41	05/25/2006	DATE FORWARDED TO EXAMINER			
40	05/24/2006	RESPONSE AFTER NON-FINAL ACTION		30	37
39	05/24/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
38	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
37	01/24/2006	MAIL NON-FINAL REJECTION			
36	01/23/2006	NON-FINAL REJECTION			
35	10/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
34	11/17/2005	DATE FORWARDED TO EXAMINER			
33	10/13/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
32	11/17/2005	DATE FORWARDED TO EXAMINER			
31	10/13/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
30	11/17/2005	DISPOSAL FOR A RCE / CPA / R129			
29.7	10/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	10/13/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	10/13/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
27	07/13/2005	MAIL FINAL REJECTION (PTOL - 326)			

26	07/11/2005	FINAL REJECTION			
25	04/25/2005	REFERENCE CAPTURE ON IDS			
24.7	04/25/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	22
24	04/25/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
23	05/06/2005	DATE FORWARDED TO EXAMINER			
22	04/25/2005	RESPONSE AFTER NON-FINAL ACTION			
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18	11/12/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
17	06/04/2004	REFERENCE CAPTURE ON IDS			
16	11/12/2004	DATE FORWARDED TO EXAMINER			
15	07/30/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
14	04/13/2001	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
12	07/30/2004	WORKFLOW INCOMING AMENDMENT IFW			
11	06/30/2004	MAIL RESTRICTION REQUIREMENT	748		-1
10	06/27/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
9.7	06/04/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	06/04/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	03/12/2004	CASE DOCKETED TO EXAMINER IN GAU			
7	10/30/2003	CASE DOCKETED TO EXAMINER IN GAU			
6.7	07/25/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	07/25/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	07/05/2001	CASE DOCKETED TO EXAMINER IN GAU			
4	06/11/2001	APPLICATION DISPATCHED FROM OIPE			
3	06/08/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/29/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/13/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Paper No. 6

THOMAS F. MEAGHER
KENYON & KENYON
ONE BROADWAY
NEW YORK, N.Y. 10004

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OFFICE OF PETITIONS

NOTICE

In re Application of :
Zuchen Lin :
Application No. 09/866,995 :
Filed: May 29, 2001 :
Attorney Docket No. 10020/22301 :

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 3700.

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

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Paper No. 8

THOMAS F. MEAGHER
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NEW YORK, N.Y. 10004

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OFFICE OF PETITIONS

In re Application of
Stephen Forrest et al
Application No. 09/833,695
Filed: April 13, 2001
Attorney Docket No. 10020/22301

NOTICE

CORRECTED 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**.

The notice mailed June 6, 2003 is hereby vacated as of the mail date of this notice.

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 3700.

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

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Stephen A. Bent
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3000 K Street, N.W., Suite 500
Washington, DC 20007-5109

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OFFICE OF PETITIONS

In re Application of

Drucker, et al.

Application No. 09/833,740

Filed: April 13, 2001

Attorney Docket No. 016777-0463

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 13, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to timely seek court review after the decision on appeal mailed July 20, 2005. A Notice of Abandonment was mailed on October 12, 2005.

The continuing application, application serial number 11/299,663, filed December 13, 2005, is noted.

The application is being forwarded to Technology Center 1600, GAU 1633 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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SEAGATE TECHNOLOGY LLC
INTELLECTUAL PROPERTY DEPARTMENT
920 DISC DRIVE, MS/SV15B1
SCOTTS VALLEY CA 95066-4544

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OFFICE OF PETITIONS

In re Application of
Paul Stephen McLeod, Michael Joseph Stirniman, and Jing Gui
Application No. 09/833,748
Filed: April 12, 2001
Attorney Docket No. STL 2932
Title: COLD TRAPS FOR VAPOR LUBRICATION PROCESSES

DECISION ON PETITION

This is a decision on the petition under 37 C.F.R. §1.182, filed March 6, 2004, to change the order of the names of the inventors.

The petition is **GRANTED**.

The petition fee has been received along with the executed declaration1. The order of the names of the inventors has been changed as follows:

Paul Stephen McLeod
Michael Joseph Stirniman
Jing Gui

A filing receipt reflecting this change is enclosed.

After this decision is mailed, the application file will be forwarded to the Office of Patent Publications for further processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

Encl. Corrected Filing Receipt

1 The newly submitted declaration will not be entered, as it contains a non-dated alteration by the second joint inventor. As such, it cannot be accepted, pursuant to 37 C.F.R. §1.52(c)(1) and MPEP 605.04(a).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OCT 5 2004

In re Application of :
MACK, SR. et al. :
Serial Number: 09/833,755 :
Filed: April 11, 2001 :
For: TRIBIOLOGICAL MATERIALS AND STRUCTURES :
AND METHODS FOR MAKING THE SAME :

PETITION UNDER
M.P.E.P.708.02 IV

This is in response to the petition filed August 5, 2004, requesting that the above-identified application be granted Special Status under Sections 708.02 IV of the MPEP and 37 CFR 1.102(c) (**no fee required**).

The request for Special Status considered under Section 708.02 IV is granted because criteria under 37 CFR 1.102(c) has been met. It is noted the petition indicates applicant Thomas Mack is seventy-four (74) years of age; this appears to be an inadvertent typographical error. The Birth Certificate presented is for applicant Edward Mack who is seventy-four (74) years of age.

Accordingly the petition is **GRANTED.**

Richard Crispino, Special Programs Examiner
Technology Center 1700
Chemical and Materials Engineering

Edwards & Angell, LLP
PO Box 55874
Boston, MA 02205

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EDWARDS & ANGELL, LLP
P.O. BOX 55874
BOSTON, MA 02205

In re Application of	:	
Edward J. Mack et al	:	
Application No. 09/833,755	:	DECISION ON PETITION
Filed: April 11, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 55531 (45676)	:	

This is a decision on the petition, filed December 29, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen months publication country on February 7, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen months publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of

such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122 (b) (2) (B) (i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of May 5, 2005 accompanies this decision on petition.

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

Frances Hicks

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

Attachment: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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STEVENS DAVIS MILLER & MOSHER LLP
1615 L STREET NW
SUITE 850
WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Reissue Application of Takeshi YUKITAKE, et al Application No. 09/833,769 Filed: April 13, 2001 Based on Patent No. 5,745,182 Issue Date: April 28, 1998 Attorney Docket No. JEL29186C-RE-DIV3	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed August 3, 2006, to revive the above-identified application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

A review of the file record discloses that a final Office action was mailed on **August 25, 2004**, which set a shortened statutory period for reply of three (3) months, with extensions of time being available up to and including **February 25, 2005.** On September 13, 2004, in response to the final Office action, applicant submitted an amendment and supplemental reissue declaration on September 13, 2004. However, in an Interview Summary Record dated June 9, 2005, the examiner stated that "the declaration filed on September 13, 2004 is defective due to the error statement which fails to be in compliance with MPEP 1414" and went on to point out the specific defects in the amendment to claim 2 and supplemental reissue declaration. On August 12, 2005, an amendment and supplemental reissue declaration were received. Thereafter, on December 9, 2005, a Notice of Allowability and Notice of Allowance and Fee(s) Due were mailed. The issue fee was timely paid on January 17, 2006.

At the time of the examiner interview on June 9, 2005 and the subsequent submission of an amendment and supplemental reissue declaration on August 12, 2005, the maximum shortened statutory period for reply had already expired. Therefore, since a proper

and timely reply placing the application in condition for allowance had not been filed prior to expiration of the maximum shortened statutory period set and no extensions of time pursuant to the provisions of 37 CFR 1.136(a) were received, the date of abandonment of this application is November 27, 2004 (November 25, 2004, the due date, was a holiday).

An examiner has no procedural authority with respect to an abandoned application. Lorenz v. Finkl, 333 F.2d 885, 891 142 USPQ 26, 30 (CCPA 1964). While it is unfortunate that, notwithstanding the lack of a proper and timely reply to the outstanding Office action, the examiner subsequently issued a Notice of Allowability and a Notice of Allowance, such actions by the examiner were performed without proper authority, and thus, had no force and effect. The examiner has no authority to revive an abandoned application. Id. The examiner's indication of patentable subject matter in an abandoned application will not have the effect of saving that application from abandonment. Lorenz v. Finkl, supra. Therefore, the subsequent mailing on December 9, 2005 of a Notice of Allowability and Notice of Allowance and Fee(s) Due was improper in view of the abandoned status of this application. Nevertheless, in view of the granting of the petition to revive this application, as set forth below, the examiner's action in the mailing of the Notices of December 9, 2005 is hereby ratified.

The petition satisfies the requirements for revival under the provisions of 37 CFR 1.137(b). Accordingly, the belated filing of a proper and timely reply to the final Office action of August 25, 2004 is accepted as having been unintentionally delayed.

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

As noted above, the issue fee has been paid. Accordingly, this application will be referred to Publishing Division for processing into a patent.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

242 1700

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 25 2003

#16

RECEIVED
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TC 1700

In re Application of Akira Arai, Suwa Serial No. 09/833,805 Filed: April 12, 2001 For: METHOD OF MANUFACTURING MAGNET MATERIALS, AND RIBBON-SHAPED MAGNET MATERIALS, POWERED MAGNET MATERIALS AND BONDED MAGNETS	: : : : : : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313

The above-identified application is withdrawn from issue after payment of the issue fee due to reopening of prosecution. See 37 CFR 1.313. (b).

The above-identified application is hereby withdrawn from issue to permit reopening. An office action from the examiner will follow in due course.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Roy King at (703) 308-1146.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Harness, Dickey & Pierce, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303

CC: Allowed Files, CP3-910

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Paper No.

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GAINESVILLE FL 32614-2950

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SEP 2 5 2006

OFFICE OF PETITIONS

In re Application of :
Walker et al. :
Application No. 09/833,833 :
Filed: April 12, 2001 :
Attorney Docket No. NAN-105XC1:

LETTER REGARDING
PATENT TERM ADJUSTMENT

This is in response to the COMMUNICATION filed July 17, 2006. Pursuant to patentees' duty of good faith and candor, patentees disclose that the initial determination of patent term adjustment under 35 U.S.C. 154(b) should be four hundred forty-two (442) days not four hundred ninety-seven (497) days.

The application for patent term adjustment is **GRANTED to the extent indicated herein**.

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 four hundred fifty-six **(456)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 29, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 497 days. Applicants disclose that a period of reduction of 55 days should have been entered pursuant to 1.704(b) for their filing a response on October 22, 2001 to the Notice to File Missing Parts of Application mailed June 7, 2001.

Applicants are correct that a period of reduction should have been entered for this failure to engage in reasonable efforts to conclude prosecution. However, applicants' calculation of the

reduction is not correct. Specifically, the record confirms that applicants' complete response was received on October 18, 2001 not October 22, 2001. As the Notice was mailed on June 7, 2001, the three-month period ended September 7, 2001. As the response was filed outside the three-month period, there was a failure to engage in reasonable efforts to conclude prosecution. A period of reduction is 41 days is entered, counting the number of days in the period beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication, September 8, 2001, and ending on the date the reply was filed, October 18, 2001.

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is 456 days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PALM Screen

Day : Wednesday

PALM INTRANET

Date: 9/20/2006
Time: 20:12:03

PTA Calculations for Application: 09/833833			
Application Filing Date:	04/12/2001	PTO Delay (PTO):	629
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	132
Post-Issue Petitions:	0	Total PTA (days):	456
PTO Delay Adjustment:	-41		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
69	09/20/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		41	
59	06/29/2006	MAIL NOTICE OF ALLOWANCE			
58	06/29/2006	MAIL EXAMINER'S AMENDMENT			
57	06/12/2006	ISSUE REVISION COMPLETED			
56	06/09/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	06/09/2006	CASE DOCKETED TO EXAMINER IN GAU			
54	06/08/2006	EXAMINER'S AMENDMENT COMMUNICATION			
53	06/07/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
52	06/08/2006	NOTICE OF ALLOWABILITY			
51	04/28/2006	DATE FORWARDED TO EXAMINER			
50	04/21/2006	RESPONSE AFTER NON-FINAL ACTION		10	48
49	04/21/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
48	01/11/2006	MAIL NON-FINAL REJECTION			
47	01/09/2006	NON-FINAL REJECTION			
46	12/19/2005	DATE FORWARDED TO EXAMINER			
45	12/02/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
44	12/19/2005	DATE FORWARDED TO EXAMINER			
43	12/02/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		30	35
42	12/19/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
41	12/02/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	12/02/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			

39	11/14/2005	MAIL ADVISORY ACTION (PTOL - 303)			
38	11/09/2005	ADVISORY ACTION (PTOL-303)			
37	11/07/2005	DATE FORWARDED TO EXAMINER			
36	11/02/2005	AMENDMENT AFTER FINAL REJECTION			
35	08/02/2005	MAIL FINAL REJECTION (PTOL - 326)			
34	08/01/2005	FINAL REJECTION			
33	06/11/2005	DATE FORWARDED TO EXAMINER			
32	06/08/2005	RESPONSE AFTER NON-FINAL ACTION		31	30
31	06/08/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	02/08/2005	MAIL NON-FINAL REJECTION			
29	02/07/2005	NON-FINAL REJECTION			
28	01/25/2005	DATE FORWARDED TO EXAMINER			
27	01/18/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
26	01/25/2005	DATE FORWARDED TO EXAMINER			
25	01/18/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
24	01/25/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
23	01/18/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
22	10/18/2004	MAIL FINAL REJECTION (PTOL - 326)			
21	10/18/2004	FINAL REJECTION			
20	10/15/2004	CORRESPONDENCE ADDRESS CHANGE			
19	08/16/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	08/16/2004	DATE FORWARDED TO EXAMINER			
17	08/02/2004	RESPONSE AFTER NON-FINAL ACTION		61	13
16	08/02/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
15	08/02/2004	WORKFLOW INCOMING PETITION IFW			
14	08/02/2004	WORKFLOW INCOMING AMENDMENT IFW			
13	03/02/2004	MAIL NON-FINAL REJECTION	629		-1
12	02/23/2004	NON-FINAL REJECTION			
11	01/03/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	09/24/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	10/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

8	01/14/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	11/15/2001	APPLICATION DISPATCHED FROM OIPE			
6	11/13/2001	APPLICATION IS NOW COMPLETE			
5	08/22/2001	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
4	06/07/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	06/06/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/28/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/12/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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FOX ROTHSCHILD LLP
2000 MARKET STREET, 10TH FLOOR
PHILADELPHIA PA 19103

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APR 0 4 2006

OFFICE OF PETITIONS

In re Application of	:	
Maguire, Stephen B.	:	
Application No. 09/883,837	:	ON PETITION
Filed: June 18, 2001	:	
Attorney Docket No. 40526.04501	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 13, 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 Transmittal; (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.

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

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

09/833865

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/19/2004

TO SPE OF : ART UNIT 2800

SUBJECT : Request for Certificate of Correction on Patent No.: 6,707,183

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 3-922
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.

Ernest C. White, LIE305-8339
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:

DANG LE
PRIMARY EXAMINER

SPE

2834
Art Unit

PTOL-306 (REV. 7/03)

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

Mail Date: 08/02/2010

Applicant	: Jori Arrakoski	: DECISION ON REQUEST FOR
Patent Number	: 7653030	: RECALCULATION of PATENT
Issue Date	: 01/26/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 09/833,868	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/12/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1837** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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

September 25, 2003

Jean-March Zimmerman
226 St Paul Street
Westfield, NJ 07090

In re application of:
Lin-Hendel DECISION ON PETITION
Serial No.: 09/833,956
Filed: April 12, 2001
For: SYSTEM AND METHOD FOR LIST
SHOPPING OVER A COMPUTER NETWORK

This is a decision on the petition received by fax on April 23, 2003, to withdraw the holding of abandon 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 Corrected Application Papers mailed June 4, 2001, which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned August 7, 2001.

On April 23, 2003, the office received a communication from the applicant of record. Enclosed was an acknowledgement that the applicant responded to the Notice to File Corrected Application Papers on June 25, 2001.

The evidence submitted is sufficient to establish that the applicant responded to the Notice to File Corrected Application Papers on June 25, 2001.

The petition is hereby Granted.

The application has been completed for release to Technology Center 3627.

The office regrets any inconvenience this may have caused the client.

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

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

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Jean-Marc Zimmerman
226 St. Paul Street
Westfield, NJ 07090

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OFFICE OF PETITIONS

In re Application of Lin-Hendel :
Application No. 09/833,956 : Decision on Petition
Filing Date: April 12, 2001 :
For: System and Method for List :
Shopping Over a Computer Network :

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

The petition is **granted**.

A final Office action was mailed August 24, 2004.

A reply was submitted on November 24, 2004.

The reply failed to prima facie place the application in condition for allowance and an advisory action was mailed December 6, 2004.

Since no extensions of time were obtained, the application became abandoned as a matter of law on midnight of November 24, 2004.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center 3627 will be informed of the instant decision and the examiner will consider the RCE filed November 9, 2005, in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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APR 25 2006
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Jean-Marc Zimmerman
226 St. Paul Street
Westfield, NJ 07090

In re Application of Lin-Hendel :
Application No. 09/833,956 :
Filing Date: April 12, 2001 :
For: System and Method for List :
Shopping Over a Computer Network :

Decision on Petition

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

The petition is **granted**.

A final Office action was mailed August 24, 2004.

A reply was submitted on November 24, 2004.

The reply failed to prima facie place the application in condition for allowance and an advisory action was mailed December 6, 2004.

Since no extensions of time were obtained, the application became abandoned as a matter of law on midnight of November 24, 2004.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center 3627 will be informed of the instant decision and the examiner will consider the RCE filed November 9, 2005, in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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2 PALO ALTO SQUARE
3000 EL CAMINO REAL, SUITE 700
PALO ALTO, CA 94306

MAILED

JUL 22 2010

OFFICE OF PETITIONS

In re Application of	:	
Catherine Lin-Hendel	:	
Application No. 09/833,956	:	DECISION ON PETITION
Filed: April 12, 2001	:	TO WITHDRAW FROM
Attorney Docket No. 101156-5008US	:	RECORD

This is a decision on the request to withdraw as attorney or agent of record under 37 CFR §§ 1.36(b), or 10.40 filed June 18, 2010.

The request is **APPROVED**.

The request was signed by Douglas J. Crisman on behalf of himself and all attorneys/agents associated with Customer Number 24341. Therefore, Douglas J. Crisman and all attorneys/agents associated with Customer Number 24341have been withdrawn.

Applicant is reminded that there are no attorneys/agents of record at this time.

The Office will no longer change the correspondence address to that of a new practitioner unless the Request is accompanied by a power of attorney to a new practitioner (e.g., Form PTO/SB/82). Thus, the request to change the correspondence cannot be accepted since it is not of the sole inventor or the intervening assignee that complied with the requirements of 37 CFR 3.73(b)[1]. All future communications from the Office will continue to be directed to the above listed address until otherwise properly notified by the applicant.

This application is being referred Technology Center Art Unit 3685 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: ANATOLY S. WEISER
3525 DEL MAR HEIGHTS ROAD, #295
SAN DIEGO, CA 92130

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

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Paper No. 6

BAKER BOTTS LLP
44TH FLOOR
30 ROCKEFELLER PLAZA
NEW YORK NY 10112-0228

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OFFICE OF PETITIONS

In re Application of
Georges Baikoff et al
Application No. 09/833,958
Filed: April 12, 2001
Attorney Docket No. 32774 PCT A USA

:DECISION DISMISSING
:PETITION TO RESET TIME
:PERIOD AND DECISION
:GRANTING PETITION UNDER
:37 CFR 1.137(b)

This is in response to the communication filed May 17, 2002, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting that the period for reply to the Notice of June 5, 2001 be reset to start on February 19, 2002. This is also a decision on the alternate petition under 37 CFR 1.137(b) to accept the reply to the Notice of June 5, 2001 as having been unintentionally delayed.

The petition under 37 CFR 1.181 is **dismissed**.

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

No Notice of Abandonment has been mailed in this case. However, this application is abandoned by operation of law for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application (Notice), mailed June 5, 2001, which set a two month period for filing an executed oath or declaration and a $130 surcharge fee for its late filing. A response was due on or before August 5, 2001, with extensions of time being available up to and including January 5, 2002. No reply or extensions of time having been received, the date of abandonment of this application is August 5, 2001.

Petitioner requests that the period for reply to the Notice mailed June 5, 2001 be restarted as of the date of receipt of the Notice, i.e., February 19, 2002. In support thereof, petitioner has supplied evidence showing the date of receipt of the USPTO Notice at the correspondence address on February 19, 2002. Petitioner states that the original Notice of

June 5, 2001 was never received until receipt of a copy thereof by facsimile transmission from the USPTO on February 19, 2002.

MPEP 710.06 states, in part:

> In the event that correspondence from the Office is received late (A) due to delays in the U.S. Postal Service, or (B) because the mail was delayed in leaving the USPTO (the postmark date is later than the mail date printed on the correspondence), applicants may petition to reset the period for reply. . ."

MPEP 710.06 further states that the period may be reset if the petition is filed within two weeks of the date of receipt of the Office action, a substantial portion of the set reply period had elapsed (e.g., at least 1 month of a 2- or 3-month reply period had elapsed) and the petition includes (1) evidence of the date of receipt of the Office action, and (2) a statement setting forth the date of receipt of the Office action at the correspondence address.

The reason set forth in the petition for requesting that the period for reply be restarted does not fall within the realm of MPEP 710.06. More specifically, the Notice of June 5, 2001 was not received late due to delays in the U.S. Postal Service or delayed in leaving the USPTO. Therefore, it would not be proper in the instant case to reset the period for reply. Accordingly, the petition to reset the period for reply to the Notice of June 5, 2001 is inappropriate here and the petition must be dismissed.

However, in view of petitioner's statement that the Notice of June 5, 2001 was not received (prior to receipt of the copy transmitted via facsimile on February 19, 2002), failure to receive the Notice of June 5, 2001 does fall within the realm of MPEP 711.03(c), under the heading "II. Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action." A review of the written record in this case fails to disclose any irregularity in the mailing of the Notice of June 5, 2001, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Notice of June 5, 2001 was not in fact received. More specifically, the showing required to establish nonreceipt of an Office action 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. Additionally, 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. The petition is not accompanied by

the evidence required by MPEP 711.03(c) to establish nonreceipt. Therefore, as requested, the petition will be treated under the alternative provisions of 37 CFR 1.137(b).

The petition satisfies the requirements of 37 CFR 1.137(b). Accordingly, the reply to the June 5, 2001 Notice is accepted as having been unintentionally delayed.

As authorized, the $1,280 petition fee will be charged to petitioner's Deposit Account No. 02-4377.

Receipt is acknowledged of the two declarations executed by the inventors herein and the $130 surcharge fee for their late filing.

Any inquiries concerning this matter may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to the Office of Initial Patent Examination Division for pre-examination proessing.

Frances Hicks

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

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MAY 29 2003

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Sheldon & Mack
225 South Lake Avenue
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Pasadena, CA 91101

Paper No. 13

In re Application of Georges Baikoff et al Serial No. : 09/833,958 Filed : April 12, 2001 For : Scleral Expansion Segment	: DECISION ON PETITION : TO WITHDRAW : HOLDING OF : ABANDONMENT :

This is a decision on petitioner's request filed May 5, 2003, to review the holding of abandonment mailed April 9, 2003, for failure to respond to the Office action mailed September 25, 2002. There is no fee required for this petition.

It is noted that a response in the form of a preliminary amendment and election along with a check to cover a three-month extension of time request, was received April 3, 2003 as is evidenced by the copy of a PTO stamped receipt submitted by applicant with the instant request. The communication included a certificate of mailing dated March 24, 2003.The original has been located and it is now with the file. A review of the record shows that the Office action of September 25, 2002 set forth a one month shortened statutory period for response and indicated that extensions of time were available under 37 CFR 1.136(a). Thus, when the response was received April 3, 2003, a five-month extension of time was needed. Accordingly, per the authorization given in the transmittal letter filed with the application papers, the fee needed to cover an additional two months of extension of time, has been charged to deposit account 19-2090.

In view of the above, the Notice of Abandonment mailed April 9, 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 April 3, 2003.

Summary: Holding of Abandonment Withdrawn.

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

ak/05/21/03

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Paper No. 14

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VENTURA, CA 93001

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MAY 1 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Seder et al.	:	
Application No. 09/833,961	:	ON PETITION
Filed: April 11, 2001	:	
Attorney Docket No. 371-20-055	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 3, 2004, 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 a proper 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 31, 2003, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.192(b) & 1.197(c). A four-month extension of time under the provisions of 37 CFR 1.136(b) was obtained. As no claim was allowed, the above-identified application became abandoned on February 1, 2004. See MPEP 1215.04. A Notice of Abandonment was mailed on April 6, 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 3700 for further processing.

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

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Mailed: 2-8-06

In re application of :
Ihor W. Tarnawskyj et al. : DECISION ON
Serial No.09/833,965 : PETITION
Filed: April 11, 2001 :
For: CONDUCTIVE CARBON FILLED
POLYVINYL BUTYRAL ADHESIVE :

This is a response to the REQUEST TO WITHDRAW NOTICE OF ABANDONMENT originally filed April 19, 2004. The request asks that the abandonment, as set forth in the Notice of Abandonment of March 25, 2004, 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 be withdrawn. The requester asserts that a timely response was filed by facsimile transmission on December 11, 2003(A copy of the papers originally filed December 11, 2003 and a copy of the Auto-Reply Facsimile Transmission indicating receipt of the facsimile transmission at the USPTO is attached to the instant petition).

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 December 11, 2003 by facsimile transmission as evidenced by the copy of the Auto-Reply Facsimile Transmission report provided with the instant petition which indicates the successful transmission, to a USPTO facsimile telephone number (703-872-9306), of 1 page. Therefore, the application was never in-fact abandoned and any holding of abandonment for failure to timely pay the issue fee is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to Publications for processing the papers originally filed December 11, 2003.

The Petition is **GRANTED**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Patent Documentation Center
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Mailed: 8/11/05

spg
Paper Number _____

In re application of
Judith L. Erb et al.
Serial No. 09/833,998
Filed: April 12, 2001
For: METHOD AND APPARATUS FOR MEASUREMENT OF BINDING BETWEEN A PROTEIN AND A NUCLEOTIDE

DECISION ON PETITION

This is a response to the INFORMATION FOR WITHDRAWAL OF ABANDONMENT - PTO HAS NO EVIDENCE THAT MAILED CORRESPONDENCE RECEIVED, filed May 27, 2004. The request asks that the abandonment, as set forth in the Notice of Abandonment of May 4, 2004, for failure to timely file a proper reply to the Office letter mailed October 1, 2003 be withdrawn since the applicants did timely file a reply on October 17, 2003. (A copy of the reply is attached to the instant petition as well as a copy of the Express Mail Label.)

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 reply was properly filed on October 17, 2003 as evidenced by the properly completed Certificate of Mailing thereon and the copy of the Express Mail Label indicating that the reply was deposited with U.S. Postal Service on October 17, 2003. Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed October 1, 2003 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry, processing and consideration of the reply originally filed October 17, 2003.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

KOHN & ASSOCIATES
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OFFICE OF PETITIONS

In re Application of :
Dewitt C. Seward et al :
Application No. 09/834,040 : DECISION GRANTING PETITION
Filed: April 12, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 301493.1001-001 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 18, 2005, 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 amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of April 20, 2004, is 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 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) 272-3208.

This matter is being referred to Technology Center AU 2133.

Karen Creasy

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

cc:
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H·A

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FEB 3 2005

In re Application of:
Masahiro Tanaka
Serial No.: 09/834,075
Filed: April 12, 2001
Attorney Docket No.: **09792909-4974**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on December 27, 2004. The petition has been treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above-identified application. No fee is required.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Final Office action mailed on July 18, 2003. A Notice of Abandonment was mailed on January 29, 2004.

Petitioner asserts that on December 18, 2003, a response including an amendment, a petition for a two-month extension of time, check to cover the extension fee, and a certificate of mailing was filed. To support this assertion, petitioner has submitted a copy of the response and the certificate of mailing showing a December 18, 2003 deposit date. Petitioner also provides a copy of a return postcard receipt acknowledging receipt in the Office of a transmittal form, transmittal fee, amendment, and check on December 29, 2003.

A proper reply under 37 C.F.R. § 1.113 to a final rejection consists of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114. Pursuant to 37 C.F.R. § 1.113, the time for reply to a Final Office action does not stop unless there is a timely filing of a proposed After Final Amendment that places the application in condition for allowance.

A review of the application file record reveals that the original response, including the petition for a two-month extension of time, filed December 18, 2003 is now of record. Furthermore, the reply places the application in condition for allowance since claims 5 - 15, indicated in the Final

Office action as being allowed, will be the only pending claims in the application upon entry of the After Final Amendment.

For the above stated reason, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

Inquiries regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.

James. L. Dwyer, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Nishiyama et al
Application No. 09/834,085
Filed: April 12, 2001
Attorney Docket No. 9281-3943

DECISION GRANTING PETITION

This is a decision on the petition filed July 30, 2001, requesting that the above-identified application be accorded a filing date of April 12, 2001, rather than the presently accorded filing date of April 11, 2001. The petition is properly treated under 37 CFR 1.10(d).

Petitioners request the later filing date on the basis that the application was deposited in Express Mail service on April 12, 2001, pursuant to the requirements of 37 CFR 1.10. The petition is accompanied by a copy of Express Mail label No. EL677509309US showing a "date-in" of April 11, 2001. The same Express Mail label number is found on the original application papers. In addition, petitioners submitted (1) a copy of their Express Mail Log for April 12, 2001 that shows a package bearing Express Mail label EL677509309US was mailed on April 12, 2001,(2) the firm's docket entry card with April 12, 2001 listed as the date of entry in Express Mail, and (3) a United States Postal Service (USPS) on-line shipment history showing April 12, 2001 as the date of deposit in Express Mail.

A review of the Office's USPS Express Mail Information Database reveals that a package with Express Mail label EL677509309US affixed thereto was accepted by the USPS on April 12, 2001.

Paragraph (d) 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 the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> > (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
> >
> > (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 showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and

> within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in s 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

The petition filed July 30, 2001, is accompanied by the corroborating evidence required by the rule. Accordingly, the petition is granted.

No fee has been or will be charged in connection to this petition.

The application is being returned to Office of Initial Patent Examination for correction of the filing date to April 12, 2001 and the mailing of a corrected filing receipt.

Thereafter, the application will be forwarded to Technology Center 2600 for examination in due course.

Any inquiries related to this decision should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

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#9

Paper No. 9

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Detroit, MI 48226-3435

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JUN 24 2002
OFFICE OF PETITIONS

In re Application of :
Terry R. Oplinger :
Application No. 09/834,092 : ON PETITION
Filed: April 12, 2001 :
Attorney Docket No. 19363-085592 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 1, 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 Notice To File Missing Parts Of Non-Provisional Application mailed May 1, 2001. The Notice set a period for reply of two(2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 2, 2001.

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 $980.00 extension of time submitted with the petition onApril; 1, 2002 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be will be refunded to petitioner in due course.

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 Office of Initial Patent Examination for further processing.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Sherry Brinkley

Sherry Brinkley
Petitions Examiner

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Paper No. 9

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AUG 05 2003

OFFICE OF PETITIONS

In re Application of Greenwood et al. Application No. 09/834,101 Filed: April 12, 2001 Attorney Docket No. MHG-05	DECISION GRANTING PETITION UNDER 37 CFR 1.137(f)

This is a decision on the "Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 CFR 1.137(b)," filed June 12, 2003, which is properly treated as a petition to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of a corresponding PCT application (No. PCT/US02/10983) filed on April 10, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the foreign or international application[1].

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

---

[1] A Rescission of Nonpublication Request was filed on April 18, 2002. However, it was not accompanied by a Notice of Foreign Filing. The mailing of a copy of the PCT notification to the US Receiving Office is not a notification to the Office of the foreign filing within the meaning of 35 U.S.C. 122(b)(2)(B)(iii) or 37 CFR 1.213(c).

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) has been rescinded. The above-identified application was published on October 17, 2002.

The application is being forwarded to Technology Center 1744 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions

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Mailed : 8/19/04

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Paper Number

In re Application of	:	DECISION
Greenwood et al.	:	ON PETITION
Serial No.: 09/834,101	:	
Filed : April 12, 2001	:	
For: Detachably Interconnected Handle	:	
And Paint Brush	:	

This is a decision on a petition under 37 CFR 1.181 filed October 15, 2003 requesting to have the species election requirement dated September 25, 2003 be reconsidered and withdrawn.

The Examiner in an Office Action dated September 25, 2003 required Applicant under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic. Applicant was advised that the reply to the Examiner's restriction requirement must include an election of the invention to be examined even though the requirement can be traversed (37 CFR 1.143)

37 CFR 1.143.Reconsideration of requirement.

If the applicant disagrees with the requirement for restriction, he may request reconsideration and withdrawal or modification of the requirement, giving the reasons therefor. (See § 1.111). In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final. The requirement for restriction will be reconsidered on such a request. If the requirement is repeated and made final, the examiner will at the same time act on the claims to the invention elected.

As shown by the first sentence of 37 CFR 1.143, the traverse to a requirement must be complete as required by 37 CFR 1.111(b) which reads in part: " In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner 's action and must reply to every ground of objection and rejection in the prior Office action." As noted in the second sentence of 37 CFR 1.143, a provisional election must be made even though the requirement is traversed.

37 CFR 1.144.Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Commissioner to review the requirement. Petition may be deferred until after final action on or allowance of claims

to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

Applicant has not filed a response to the Examiner's species election requirement nor has Applicant received a final requirement for restriction from the Examiner.

The petition is **DISMISSED**.

Jmstone

Jacqueline M. Stone, Director
Technology Center 1700
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OFFICE OF PETITIONS

In re Application of
Greenwood et al.
Application No. 09/834,101
Filed: April 12, 2001
Attorney Docket No. MHG-05

Decision on Petition

This a decision on the petition under 37 CFR 1.137(b), filed October 22, 2004, to revive the above-identified application. The petition will also be treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

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

Background

35 U.S.C. 121 states, "If two or more independent and distinct inventions are claimed in one application, the Director may require the application to be restricted to one of the inventions."

37 CFR. 1.142 states, "If two or more independent and distinct inventions are claimed in a single application, the examiner in an Office action will require the applicant in the reply to that action to elect an invention to which the claims will be restricted."

Section 808.01 of the Manual of Patent Examination Procedure ("MPEP") states, "Election of species should be required prior to a search on the merits . . . in all applications containing claims to a plurality of species with no generic claims."

The examiner determined that two or more independent and distinct inventions were being claimed in the instant application. Specifically, the examiner determined the application claimed several species and no generic claim. The examiner mailed a non-final Office action on September 25, 2003, requiring applicant to elect an invention to which the claims would be restricted.

The Office action listed ten species of the invention and four sub-species. The Office action stated, "Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution to which the claims shall be restricted if no general claim is finally held to be allowable. Currently no claim is generic."

The Office action warned applicant that a reply would be considered both nonresponsive and incomplete unless it was accompanied by an election. The Office action stated, "An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election." The Office action stated, "Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed."

One may request reconsideration and withdrawal of a restriction requirement. 37 CFR 1.143 states, "If [an] applicant disagrees with the requirement for restriction, he may request

reconsideration and withdrawal or modification of the requirement, giving the reasons therefor." Although 37 CFR 1.143 allows one to traverse a restriction requirement, it does not absolve one of making a provisional election. Per 37 CFR 1.143, "In requesting reconsideration the applicant must indicate a provisional election of one invention for prosecution, which invention shall be the one elected in the event the requirement becomes final."

If an applicant traverses the restriction requirement and the examiner mails a final requirement for restriction, a petition for review of the restriction requirement may be filed. Per 37 CFR 1.146, "After a final requirement for restriction, the applicant . . . may petition the Director to review the requirement. . . . A petition will not be considered if reconsideration of the requirement was not requested."

On October 20, 2003, petitioner filed a petition entitled, "Petition to the Director Under 37 CFR §181 Requesting Withdrawal Of, or Relief From, Examiner's Species Election Requirement." The petition sought reconsideration and withdrawal of the restriction requirement. In the alternative, petitioner requested modification of the restriction requirement. The proposed modification placed the claims into four groups. Petitioner stated that, if the modification was adopted, petitioner elected the first group of claims. An applicant may request withdrawal or modification of a restriction requirement. Specifically, 37 CFR 1.143 allows one to seek, "reconsideration and withdrawal or modification of the [restriction] requirement." However, the request must be accompanied by a provisional election. Petitioner did not indicate a provisional election of any of the species or subspecies given by the examiner.

The petition was reviewed by a Director for Technology Center 1700. A decision dismissing the petition was mailed on August 19, 2004. The decision noted that a request for reconsideration of a restriction requirement must be accompanied by a provisional election. The decision noted that, in order for a petition to review a restriction requirement to be timely, it must be filed after a final requirement for restriction has been made. See 37 CFR 1.146. The decision stated, "Applicant has not filed a response to the Examiner's species election requirement nor has Applicant received a final requirement for restriction from the examiner."

A Notice of Abandonment was mailed on October 4, 2004.

The petition under 37 CFR 1.181

Petitioner contends the application is not abandoned.

Petitioner contends the provisions of 37 CFR 1.143 do not apply to the situation when an examiner requires an election of species. The requirement for an election of species is a type of restriction requirement. MPEP 802.02 states, "Restriction, a generic term, includes . . . election of species." The provisions of 37 CFR 1.143 apply when a requirement for restriction is mailed by the examiner. Therefore, the requirement for a provisional election stated in 37 CFR 1.143 applies to the instant application.

Petitioner contends the requirement for an election allows petitioner to create groups and elect from such groups. Although 37 CFR 1.143 only states that an election must be made, the context clearly indicates the election must be of one of the groups cited by the examiner. Petitioner's interpretation would result in an applicant, after receiving a restriction requirement that lists 4 groups of 100 claims each, being able to simply create one group of 398 claims and another of group of 2 claims and elect the first group. A reading of the MPEP fails to indicate that petitioner's interpretation should be given more weight than the Office's interpretation of a rule drafted by the Office. An election must be an election of one of the groups/inventions cited by the examiner.

Petitioner did not file a complete reply. Specifically, petitioner did not make a provisional election any of the inventions/species cited by the examiner.

The failure to file a complete reply to a non-final Office action normally results in abandonment. However, 37 CFR 1.135(c) provides,

> When reply by the applicant is a bona fide attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

If the reply to an Office action fails to satisfy the criteria set forth in 37 CFR 1.135(c), the application is abandoned and the examiner does not have the discretion to set a new time period for an applicant to reply. The MPEP 714.03 states,

> The practice set forth in 37 CFR 1.135(c) does not apply where there has been a deliberate omission of some necessary part of a complete reply; rather, 37 CFR 1.135(c) is applicable only when the missing matter or lack of compliance is considered by the examiner as being "inadvertently omitted." For example, if an election of species has been required and applicant does not make an election because he or she believes the requirement to be improper, the amendment on its face is not a "bona fide attempt to advance the application to final action" (37 CFR 1.135(c)), and the examiner is without authority to postpone decision as to abandonment.

In this case the failure to elect one of the species was not an inadvertent omission. Petitioner made a conscious decision not to elect from the species listed by the examiner. Therefore, the examiner was required to hold the application abandoned.

Even if a reply satisfies the criteria set forth in 37 CFR 1.135(c), the application may still be held to be abandoned. MPEP 714.03 states, with emphasis added, "37 CFR 1.135(c) authorizes, *but does not require*, an examiner to give the applicant a new time period to supply an omission." An examiner may set a new time period for response, but is not required to take such a step. Petitioner has failed to prove the examiner abused his discretion by not setting a new period after petitioner chose not to file an election despite the examiner informing petitioner in the Office action that a response would be considered both nonresponsive and incomplete unless it was accompanied by an election.

For the reasons above, the application became abandoned as of midnight on October 25, 2003, and the holding of abandonment is not withdrawn.

<u>The petition under 37 CFR 1.137(b)</u>

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,
(2) the petition fee,
(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (1). A proper reply to the September 25, 2003 Office action has not been filed. Petitioner may seek reconsideration of the restriction requirement. For example, petitioner might state the claimed inventions are obvious over each other within the meaning of

35 U.S.C. 103, and therefore restriction should not be required.[1] However, a reply to be complete, must be accompanied by a provisional election.

Since a proper reply has not been filed, the petition to revive cannot be granted.

Petition to make special

Petitioner requests a decision on the petition to make special filed October 20, 2003. Petitioner may wish to note that the Office is unable to accord special status to an application which is abandoned since such an application is not examined. Upon the revival of the application, the petition to make special will be referred to the Technology Center.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

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

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

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

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

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

[1] MPEP 803 states, "If there is an express admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. 103, restriction should not be required. *In re Lee*, 199 USPQ 108 (Comm'r Pat. 1978)."

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United States Patent and Trademark Office
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OLSON & HIERL, LTD.
36th Floor
20 North Wacker Drive
Chicago, IL 60606

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AUG 03 2005

OFFICE OF PETITIONS

In re Application of
Greenwood et al.
Application No. 09/834,101
Filed: April 12, 2001
Attorney Docket No. MHG-05

Decision on Petition

This a decision on the renewed petition under 37 CFR 1.137(b), filed April 12, 2001, to revive the above-identified application.

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

The examiner mailed a non-final Office action on September 25, 2003, requiring applicant to elect an invention to which the claims would be restricted. A proper reply was not filed and the application became abandoned at midnight on October 25, 2003. A Notice of Abandonment was mailed on October 4, 2004.

The instant petition requests revival of the application. Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 1744 will be informed the application has been revived and the reply filed on May 9, 2005, will be considered by the examiner in due course.

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

Charles Steven Brantley
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FISH & RICHARDSON PC
225 FRANKLIIN STREET
BOSTON, MA 02110

In re Application of	:
Ali Kiagawa et al	:
Serial No.: 09/834,103	: PETITION DECISION
Filed: April 12, 2001	:
Attorney Docket No.: 12372-002001	:

This is in response to the petition under 37 CFR 1.181, filed November 6, 2003, for withdrawal of abandonment of the above identified application based on filing of a timely reply. The delay in acting on this petition is regretted.

A review of the file history shows that the examiner mailed a Final Office action to applicants on January 8, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the examiner mailed a Notice of Abandonment to applicants on September 4, 2003. Applicants state that a reply consisting of an amendment, RCE papers and a request for a three month extension of time and the fees therefore were filed July 8, 2003, and provide an Office date stamped postcard (dated July 11, 2003) evidencing receipt of the reply by the Office. The response was later located and correlated with the file. In view of the evidence presented the Notice of Abandonment was mailed in error and is withdrawn and the application is restored to pending status with the mailing of this decision.

It is further noted that prior to this petition being forwarded for consideration the examiner mailed a new Office action to applicants. In effect that Office action restored the application to pending status and this decision is merely to complete the record that the action taken was proper and correct. Applicants remain under obligation to reply to the outstanding Office action within the time period set therein or as may be extended under 37 CFR 1.136(a).

The petition is **GRANTED** retroactively.

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 703-272-0519 or by facsimile sent to the general Office facsimile number.

Bruce M. Kisliuk
Director, Technology Center 1600

9/834110 ~~6808702 B2~~

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: —

DATE : 8/1/05

TO SPE OF : ART UNIT 1632

SUBJECT : Request for Certificate of Correction on Patent No.: 6808702 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:
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.

Virginia Tolbert

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 113

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:

Do not enter amendment to claim 10, -- subjects -- is already present in the claim. It appears that the terms were reversed by Applicants.

Joe Woodard — **SPE**

1632 — **Art Unit**

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,808,702
DATED: 26 October 2004
INVENTOR(S): Pankaj J. PASRICHA and Maria A. MICCI

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

do not enter

~~At column 10, claim 10, line 25, please delete "subject" and insert --subjects,--.~~

okay to enter

At column 10, claim 15, line 40, please delete "to mouth" and insert --the mouth--.

At column 10, claim 17, line 44, please delete "stem" and insert --stem--.

JW 7/27/06

MAILING ADDRESS OF SENDER:

MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581415
MINNEAPOLIS, MINNESOTA 55401
Customer Number 26813

PATENT NO. 6,808,702

No. of add'l copies

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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO CA 92121

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OFFICE OF PETITIONS

In re Application of	:	
Chi et al.	:	
Application No. 09/834,135	:	ON PETITION
Filed: April 12, 2001	:	
Attorney Docket No. 010140	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 20, 2007 (Certificate of Mailing June 1, 2004), 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.

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 $1020.00 extension of time fee submitted with the petition was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

The application file is being forwarded to Technology Center 2600 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 12

MADSON & METCALF
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY UT 84101

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JAN 13 2005

OFFICE OF PETITIONS

In re Patent No. 6,588,126	:	
Issue Date: July 8, 2003	:	ON PETITION
Application No. 09/834,147	:	
Filed: April 12, 2001	:	
Attorney Docket No. 2001.2.6	:	
	:	

This is in response to the communication entitled "LATE SUBMISSION OF PRIORITY DOCUMENTS" filed August 31, 2004, which is being treated as a petition under 37 CFR 1.55(a) for entry of late submission of priority documents for Australia Patent Application Nos. PQ6887, filed April 13, 2000 and PQ7644, filed May 19, 2000, after the patent has been granted.

The petition is **dismissed**.

Under the rule (37 CFR 1.55 (a)(2)), an applicant who wishes to secure the right of priority must comply with certain formal requirements within a time specific. If these requirements are not complied with the right of priority is lost and cannot thereafter be asserted.

Inspection of the instant record reveals that although a claim for foreign priority under 35 U.S.C. § 119 was lodged in a declaration filed with the instant application on April 12, 2001, the certified copy of the priority document was not filed until subsequent to the issuance of the above-captioned patent. Specifically, the requirements of the rule are (a) that the applicant must file a claim for the right and (b) he or she must also file a certified copy of the original foreign application, and (c) these papers must be filed within a certain time limit. The maximum time limit specified in the rule is that the claim for priority and the priority papers must both be filed before

the patent is granted. See 37 CFR 1.55 (a)(2). If the required papers are not filed within the time limit set the right of priority is lost. Since the certified copy of the priority document was not, as required by the rule, filed in the above-identified application until after the patent was granted, the petition must be dismissed.

However, a reissue was granted in Brenner v. State of Israel, 862 O.G. 661; 158 USPQ 584 (D.C. Cir. 1968), where the only ground urged was an applicant's failure to file the certified copy of the original foreign application under 35 U.S.C. § 119 before the patent was granted. Under the circumstances of this case, petitioner may wish to seek relief from his predicament by way of reissue under 35 U.S.C. § 251. Id. See also 65 F.R. 57024, supra; MPEP §§ 201.16, 1402.

Any questions concerning this decision on petition should be directed to the undersigned at (571)272-3208.

The patent file is being forwarded to Files Repository.

Karen Creasy

Karen Creasy
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, DC 20231
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Office of the Director
Group 3600

FINNEGAN, HENDERSON, FARABOW
GARRETT & DUNNER LLP
1300 I STREET, N.W.
WASHINGTON, DC 20005-3315

In re application of
Jerome Chen
Application No. 09/834,156
Filed: April 12, 2001
For: TRAVEL MANAGEMENT SYSTEM UTILIZING MULTIPER COMPUTER RESERVATION SYSTEMS (CRSs)

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on November 8, 2002, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions A) and B) above.

As to condition A), it is not clear if Debbie Segars of Sabre Inc. is withdrawing. She is listed in the original Power of Attorney but is not part of the firm of Finnegan, Henderson, Farabow, Garrett & Dunner. Also, the request is signed not signed by an attorney of record.

As to condition B), a reason for withdrawal has not been given.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866
Facsimile No.: (703) 605-0586

DK/dw: 01/10/03

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MATHEW A. NEWBOLES
STETINA BRUNDA GARRED & BRUCKER
75 ENTERPRISE, SUITE 250
ALISO VIEJO, CA 92656

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OFFICE OF PETITIONS

In re Application of	:
Raymond G. Freuler et al	:DECISION GRANTING PETITION
Application No. 09/834,158	:UNDER 37 CFR 1.137(b)
Filed: April 12, 2001	:
Atty Docket No. LPD-009/POWRD-014B	:

This is a decision on the petition, filed April 5, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

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

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on March 13, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the USPTO of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of December 30, 2004 has been mailed under separate cover.

A Notice of Allowability and a Notice of Allowance and Fee(s) Due were mailed in this case on February 27, 2004. However, in view of the nonpublication request filed with the application, the Notice of Allowance and Fee(s) Due mailed in this case did not require the submission of a publication fee. Therefore, in view of the rescinding of the nonpublication request and in view of the presence of an authorization to charge any additional fee due submitted with the petition, the $300 publication fee will be charged to petitioner's deposit account. If publication of the application does not occur, applicant may file a request for a refund after the patent issues.

This matter is being referred to Publishing Division.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680. Effective September 27, 2004, the new phone number will be (571) 272-3218.

Frances Hicks

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

#10
1/13/03

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JAN 1 3 2003

Technology Center 2100

Paper No. 10

Raymond R. Berdie
Schwegman, Lundberg, Woessner & Kluth, P.A.
P.O. Box 2938
Minneapolis, MN 55402

In re Application of: Craig R. Burfeind et al.	)	**DECISION ON PETITION UNDER**
Application No. 09/834,160	)	**37 C.F.R. § 1.102 (d) AND M.P.E.P.**
Filed: April 12, 2001	)	**708.02 (VIII): ACCELERATED**
For: METHOD AND APPARATUS FOR	)	**EXAMINATION**
MOBILE PERSONAL RADAR	)	

This is a decision on the petition, filed March 5, 2002 under 37 C.F.R. 1.102(d) and M.P.E.P. 708.02(VIII): Accelerated Examination, to make the above-identified application special.

The petition is **DISMISSED**.

M.P.E.P. 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R.1.102(d) states in relevant part:

> A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:
>
> (a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
>
> (b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status.
>
> (c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
>
> (d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
>
> (e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111(b) and (c), how the claimed subject matter is patentable over the references.

> In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submission is deficient in that there is no detailed discussion of the references as required by section (e) to the extent required by 37 CFR 1.111(b) and (c). The submission does not satisfy the requirement, as it does not provide a ***detailed discussion*** of the references that are deemed most closely related. Applicant's general characterization of the references and statements that the references "do not teach or suggest the wireless client device" recited in the claims do not comply with the requirements of pointing out the specific distinctions believed to render the claims patentable over the applied references. Note that the further *identical statement*, that essentially encompass the entirety of claims 20 and 28, except for "a processor", is not taught or suggested by the reference, is presented for each of the references purported to be "most closely related". That is, the detailed discussion of the references as required by section (e) does not have the particularity required by 37 CFR 1.111(b) and (c).

Accordingly, the Petition is **DISMISSED**. The application file is being forwarded to Central Files to await examination in its proper turn based on its effective filing date.

Any request for reconsideration must be filed within two months of the mailing date of this decision. Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-4160.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Security, Architecture, and Software
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

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TECHNOLOGY CENTER 2100

COMMISSIONER FOR PATENTS
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Paper No. 6

FENWICK & WEST LLP
TWO PALO ALTO SQUARE
PALO ALTO CA 94306

In re Application of : S. Merrin et al.
Application No. 09/834,171
Filed: April 12, 2001
For: ELECTRONIC SECURITIES MARKETPLACE HAVING INTEGRATION WITH ORDER MANAGEMENT SYSTEMS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition, filed August 16, 2001, to make the above-identified application special under 37 C.F.R. §102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. § 102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
(B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status...;
(C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
(D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and
(E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

In those instances where the request for this special status does not meet all the prerequisites set forth above, applicant will be notified and the defects in the request will be stated. The application will remain in the status of a new application awaiting action in its regular turn. In those instances where a request is defective in one or more respects, applicant will be given one opportunity to perfect the request in a renewed petition to make special. If perfected, the request will then be granted. If not perfected in the first renewed petition, any additional renewed petitions to make special may or may not be considered at the discretion of the Group Special Program Examiner.

Applicant's submission meets all the criteria set forth above and the petition is **GRANTED**.

The application file is being forwarded to the Examiner for accelerated examination in accordance with M.P.E.P. §708.02. If the application is subsequently allowed, it will be given priority for printing. See M.P.E.P. §1309.

Robert A. Weinhardt
Special Program Examiner
Technology Center 2100
Computer Architecture, Software,
& Electronic Commerce
703-305-9780

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Paper No. 10

Brian M. Hoffman
FENWICK & WEST LLP
Two Palo Alto Square
Palo Alto, CA 94306

In re Application of:
Seth MERRIN et al
Application No.: 09/834,171
Filed: April 12, 2001
For: ELECTRONIC SECURITIES MARKETPLACE HAVING INTEGRATION WITH ORDER MANAGEMENT SYSTEMS

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request For Withdrawal As Attorney Under 37 CFR § 1. 36 and 10.40(c) filed February 19, 2002.

A Power Of Attorney Under 37 CFR § 1. 36 was filed on March 11, 2002. The Power Of Attorney revoked all prior Powers Of Attorney and appointed LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK as the attorneys of record of the instant application. The Power Of Attorney of March 11, 2002 was accepted. Accordingly, all communications from the U.S. Patent and Trademark Office to applicant are to be conducted by LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK.

For the above stated reasons, the request is DISMISSED AS MOOT.

No further communication to you regarding this application will be made.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 305-9750

cc: Jeff Dickey
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK
600 South Avenue West
Westfield, NJ 07090

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

W. Jeff Chandler
10186 E. Kalil Dr.
Scottsdale, AZ 85260

(Applicant)

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MAR 0 5 2004

OFFICE OF PETITIONS

In re Application of
W. Jeffrey Chandler et al.
Application No. 09/834,175
Filed: April 12, 2001
For: SYSTEM AND METHOD FOR VENTURE ACCELERATION

: DECISION DISMISSING PETITION TO INSTITUTE PUBLIC USE PROCEEDINGS

On October 14, 2003, a petition under 37 CFR 1.292 to institute public use proceedings against the claims in the above-identified application was filed by Venture Vortex, Inc.

The petition is dismissed as untimely.

Effective November 29, 2000, 37 CFR 1.292(b) was amended to read:

> (b) The petition and accompanying papers, or a notice that such a petition has been filed, shall be entered in the application file if:
> (1) The petition is accompanied by the fee set forth in § 1.17(j);
> (2) The petition is served on the applicant in accordance with § 1.248, or filed with the Office in duplicate in the event service is not possible; and
> (3) The petition is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first.

The application was published on March 14, 2002. Thus, the petition was not "submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first." Accordingly, the petition is untimely and it has not been entered in the application file.

Since the petition includes an indication of service on the applicant, the original petition is being discarded. (This is consistent with the practice for treatment of untimely petitions filed after the mailing of a notice of allowance set forth in MPEP 720.01.)

The application is being forwarded to Technology Center Art Unit 2161.

Telephone inquiries specific to this matter should be directed to Eugenia Jones, Senior Legal Advisor, at (703) 306-5586.

Fred A. Silverberg
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Frank Cozzarelli, Jr. (Attorney for Petitioner)
Cozzarelli Law Firm, P.A.
727 Joralemon Street
Belleville, NJ 07109

UNITED STATES
PATENT AND
TRADEMARK OFFICE

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

MAR - 6 2003

#14

FULBRIGHT & JAWORSKI
666 FIFTH AVENUE
NEW YORK, NY 10103-3198

In re Application of	:
Elaine L. Jacobson et al	:
Serial No.: 09/834,228	: PETITION DECISION
Filed: April 12, 2001	:
Attorney Docket No.: NIAD 214.1	:

This letter is in response to the petition under 37 CFR 1.181, filed November 26, 2002, requesting withdrawal of the finality of the last Office action.

BACKGROUND.

A review of the file history shows that the examiner mailed a first Office action to applicants on January 2, 2002, setting a three month shortened statutory period for reply. The Office action rejected claims 1-7 and 9-16 under 35 U.S.C. 112, first and/or second paragraphs, as lacking enablement and being indefinite. Claims 1, 3-5 and 11-16 were rejected under 35 U.S.C. 103(a) as unpatentable over Rine in view of Le et al and Otsuka et al. Claims 1-16 were also rejected under 35 U.S.C. 103(a) as unpatentable over Abe et in view of Otsuka et al. Applicants replied on April 1, 2002, by canceling claims 1-16 and adding claims 17-29, and addressing all of the rejections.

The examiner mailed a second Office action to applicants on June 18, 2002, rejecting claims 17, 19-22, 24-25 and 27 under 35 U.S.C. 102(b) as anticipated by Huber. Claims 17-29 were rejected under 35 U.S.C. 103(a) as unpatentable over Huber in view of Le et al and Otsuka et al. Applicants replied on August 29, 2002, by canceling claims 17-29 and adding claims 30-37 and by addressing all of the rejections of record.

The examiner mailed a Final Office action to applicants on November 20, 2002, rejecting claims 30-33 under 35 U.S.C. 102(b), as anticipated by Huber. Claims 30 and 34-37 were rejected under 35 U.S.C. 103(a) as unpatentable over Huber in view of Otsuka et al. An amendment after Final Office action was submitted on February 20, 2003, but has not yet been considered by the examiner. This petition was filed November 26, 2002.

DISCUSSION

Applicants contend that the last Office action should not have been made Final since a claim previously rejected under 35 U.S.C. 103(a) was now rejected under 35 U.S.C. 102(b). Applicants state that present claim 30, rejected under 35 U.S.C. 102(b), corresponds to canceled claim 23 which was rejected only under 35 U.S.C. 103(a).

A careful review of the claims shows that present claim 30 is directed to a method of enhancing oxygen delivery to tissues by applying a composition containing a nicotinic alkyl ester having 8-10 C in the ester portion to the tissue. Claim 23 which depends from claim 21 which depends from claim 19 which depends from claim 17 was rejected in the previous Office action under 35 U.S.C. 103. Claim 23 as it eventually depends from claim 17 is directed to a method of enhancing oxygen delivery by applying a 8-10 C alkyl ester of a first compound which is converted to a vasodilator in a method of enhancing oxygen delivery to tissues. The compound is not specifically identified. Claim 24 which also ultimately depends from claim 17 and was rejected under 35 U.S.C. 102(b), specifies the first compound as a niacin alcohol ester (a nicotinic alkyl ester). The argument by the examiner under 35 U.S.C. 102(b) specifically mentions hexyl nicotinate (C6), citing *inter alia* claim 1 of the reference. The argument under 35 U.S.C. 103(a) specifically identifies butyl-, pentyl-, hexyl-, heptyl- and octyl- nicotinate and cites claim 1 of the reference.

Applicants state that if an examiner could have made a rejection in a previous Office action and raised it in a subsequent Office action the action cannot be made Final. Here, however, the basis for rejection of new claim 30 was set forth in a previous Office action and applied to claims 17, 19-22, 24-25 and 27. Thus the rejection is not a new rejection not previously set forth. Only which claims should have been rejected thereunder may have been in error. However, applicants were specifically put on notice of the teachings of Huber in the rejection under 35 U.S.C. 103(a) which specifically mentions the octyl ester which is now claimed. The now claimed method of applying a nicotinic acid alkyl ester absent any specific alkyl length (e.g. 8-10C) was specifically rejected under 35 U.S.C. 102(b) in the previous Office action when claim 24 was rejected.

DECISION

The petition is **DENIED** for the reasons set forth above. Finality of the last Office action is deemed to be proper.

The application will be forwarded to the examiner for consideration of the amendment filed February 20, 2003.

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

John Doll
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND OH 44114-3108

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OCT 18 2006

OFFICE OF PETITIONS

In re Patent No. 7,027,160 :
Issue Date: April 11, 2006 :
Application No. 09/834,241 : NOTICE
Filed: April 12, 2001 :
Attorney Docket No. 33398 :

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

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Paper No. 9

MAILED

JUN 0 2 2004

Technology Center 2100

John F. Schipper
111 N. Market Street, Suite 808
San Jose, CA 95113

In re Application of:
Jae Shim
Application No. 09/834,265
Filed: April 11, 2001
For: MULTI-LINE EDITOR FOR COMPACT DISPLAY

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed October 06, 2003.

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 withdrawal 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 filed October 06, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

James R. Matthews

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

cc: Jae Shim
5944 Killarney Cricle
San Jose, CA 95138

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/16/07

TO SPE OF : ART UNIT 2827

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/834297 Patent No.: 6806567

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

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

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

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

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

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

Comments: _____

Paul Whitehead
SPE

2813
Art Unit

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MR. MARK DELUCA
COZEN O' CONNOR
1900 MARKET STREET
PHILADELPHIA, PA 19103

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MAY 17 2006
OFFICE OF PETITIONS

In re Application of :
Ravetch et al. :
Application No. 09/834,321 :
Filed: April 13, 2001 :
Title of Invention: :
ENHANCEMENT OF ANTIBODY-MEDIATED :
IMMUNE RESPONSES :

This is a decision in response to the petition under 37 CFR 1.137(b), filed April 6, 2006, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed January 28, 2004. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No reply having been received, the application became abandoned on April 29, 2005. A Notice of Abandonment was mailed on October 7, 2005.

With the instant petition, Petitioner has satisfied the requirements of a grantable petition under 37 CFR 1.137(b). A response to the Office action is filed with the instant petition. Accordingly, the petition is granted.

This application is being forwarded to Technology Center Art Unit 1644 for processing of the response in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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March 15, 2004

Richard L. Mayer
Kenyon & Kenyon
One Broadway
New York, NY 10004

In re application of:
Hermann Winner et al DECISION ON PETITION
Serial No.: 09/834,331
Filed: April 12, 2001
For: METHOD FOR REGULATING THE SPEED OF A VEHICLE

This is a decision on the petition received on November 10, 2003, 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 June 5, 200l. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned August 7, 2001. A notice of abandonment was mailed on October 16, 2003.

On November 10, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice to File Missing Parts on August 13, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing part on August 13, 2001.

The petition is hereby GRANTED.

The application has been completed fro release to Technology Center 2635.

The office regrets an inconvenience this may have caused counsel.

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

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WASHINGTON, D.C. 20231
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DEC 1 6 2002

Technology Center 2100

Paper No. 7

Blakely, Sokoloff, Taylor & Zafman LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

In re Application of: Bruce V. Hartley, et al.	)	
Application No. 09/834,334	)	
Filed: April 12, 2001	)	**DECISION ON REQUEST FOR**
For: METHOD AND APPARATUS FOR	)	**WITHDRAWAL AS ATTORNEY**
ASSESSING THE SECURITY OF A	)	
COMPUTER SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed November 15, 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 effective date of withdrawal 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**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: Curtis A. Vock
Attorney at Law
LATHROP & GAGE, L.C.
4845 Pearl East Circle, Suite 300
Boulder, CO 80301

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

Nathaniel J. Fisch
105 Fitzrandolph Road
Princeton, NJ 08540

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SEP 1 5 2003

OFFICE OF PETITIONS

In re Application of
Nathaniel J. Fisch et al.
Application No. 09/834,373
Filed: April 13, 2001
Attorney Docket No.

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 29, 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 November 14, 2002, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on February 15, 2003.

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

The application file is being forwarded to Technology Center AU 2879.

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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OFFICE OF PETITIONS

In re Application of	:	
WOLZIEN	:	
Application No. 09/834,375	:	DECISION ON PETITION
Filed: April 13, 2001	:	TO WITHDRAW
Attorney Docket No. 10025.00	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 26, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Adam Keser of OPTV/MOFO has been revoked by the assignee of the patent application on October 12, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **MARC KAUFMAN, ESQ.**
NIXON PEABODY LLP
401 9TH STREET NW, SUITE 900
WASHINGTON, DC 20004

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OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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JUL 31 2007

OFFICE OF PETITIONS

In re Application of :
WOLZIEN, Thomas R. :
Application No. 09/834,375 :
Filed: April 13, 2001 :
Attorney Docket No. 10025.00 :

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 17, 2007.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to **OPTV/MOFO** has been revoked by the assignee of the patent application on October 12, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **NIXON PEABODY, LLP**
401 9TH STREET NW, SUITE 900
WASHINGTON DC 20004-2128

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 10

DANIEL P. MAGUIRE
423 E STREET
DAVIS CA 95616

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JUN 2 6 2003
OFFICE OF PETITIONS

In re Application of :
Franklin et al. :
Application No. 09/834,389 : ON PETITION
Filed: 13 April, 2001 :
For: INTEGRATED AND MODULAR :
BSP/MEA/MANIFOLD PLATES FOR FUEL :
CELLS :

This is a decision on the petition filed on 22 February, 2002, under 37 CFR 1.182, requesting acceptance of a revocation and appointment of a power of attorney made on behalf of less than all the named inventors. The Office apologizes for the delay in responding to the present petition.

The petition is granted.

The declaration under 37 CFR 1.63 filed on 22 June, 2001, naming Jerrold E. Franklin, Eric S. Mettler, Muralidharan P. Arikara, and Lawrence R. Bawden, Jr. was signed by all joint inventors and gave power of attorney to, *inter alia*, Howard M. Peters (Peters *et al.*) of Peters, Verny, Jones & Biksa, LLP, 385 Sherman Avenue, Suite 6, Palo Alto, CA 94306, as the correspondence address of record. On 15 February, 2002, a revocation of power of attorney signed by all inventors was filed.

Petitioners Jerrold E. Franklin and Eric S. Mettler by way of registered practicioner Daniel P. Maguire, 423 E Street, Davis, CA 95616, asserts that a dispute has arisen between themselves and joint inventors Arikara and Bawden and seek to require that all correspondence filed in this application be signed by representatives of themselves and by joint inventors Arikara and Bawden, who have not filed a power of attorney.

In accordance with MPEP 402.10, to assure that all interests are properly and effectively represented, **all further correspondence**

to the U.S. Patent and Trademark Office (USPTO) must be signed by petitioners' representative (Maguire) as named in the declaration and power of attorney submitted on 22 February, 2002, and likewise signed by joint inventors Arikara and Bawden, or any representative they appoint. Each attorney signing subsequent papers must indicate whom he or she represents.

In view of the revocation of the power of attorney to Peters *et al.*, and the appointment of Maguire as the only attorney of record, all future correspondence will be sent solely to Maguire.[1] **All parties are reminded that dual correspondence is not permitted and will not be undertaken by the USPTO.**

It is noted that, notwithstanding this decision, the inventors may still **jointly** appoint or revoke a power of attorney.

The application is being forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Muralidharan P. Arikara
1009 Carter Street
Folsom, CA 95630

Lawrence R. Bawden, Jr.
3720 Devon Court
El Dorado Hills, CA 95762

---

[1]When acceptance of such papers results in an attorney or agent and at least one applicant or owner prosecuting the application, correspondence will be mailed to the attorney or agent. MPEP 402.10.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

DANIEL P. MAGUIRE
423 E STREET
DAVIS CA 95616

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JUN 2 6 2003
OFFICE OF PETITIONS

In re Application of :
Franklin et al. :
Application No. 09/834,389 : ON PETITION
Filed: 13 April, 2001 :
For: INTEGRATED AND MODULAR :
BSP/MEA/MANIFOLD PLATES FOR FUEL :
CELLS :

This is a decision on the petition filed on 22 February, 2002, under 37 CFR 1.182, requesting acceptance of a revocation and appointment of a power of attorney made on behalf of less than all the named inventors. The Office apologizes for the delay in responding to the present petition.

The petition is granted.

The declaration under 37 CFR 1.63 filed on 22 June, 2001, naming Jerrold E. Franklin, Eric S. Mettler, Muralidharan P. Arikara, and Lawrence R. Bawden, Jr. was signed by all joint inventors and gave power of attorney to, *inter alia*, Howard M. Peters (Peters *et al.*) of Peters, Verny, Jones & Biksa, LLP, 385 Sherman Avenue, Suite 6, Palo Alto, CA 94306, as the correspondence address of record. On 15 February, 2002, a revocation of power of attorney signed by all inventors was filed.

Petitioners Jerrold E. Franklin and Eric S. Mettler by way of registered practicioner Daniel P. Maguire, 423 E Street, Davis, CA 95616, asserts that a dispute has arisen between themselves and joint inventors Arikara and Bawden and seek to require that all correspondence filed in this application be signed by representatives of themselves and by joint inventors Arikara and Bawden, who have not filed a power of attorney.

In accordance with MPEP 402.10, to assure that all interests are properly and effectively represented, all further correspondence

Application No. 09/834,389

to the U.S. Patent and Trademark Office (USPTO) must be signed by petitioners' representative (Maguire) as named in the declaration and power of attorney submitted on 22 February, 2002, and likewise signed by joint inventors Arikara and Bawden, or any representative they appoint. Each attorney signing subsequent papers must indicate whom he or she represents.

In view of the revocation of the power of attorney to Peters *et al.*, and the appointment of Maguire as the only attorney of record, all future correspondence will be sent solely to Maguire.[1] **All parties are reminded that dual correspondence is not permitted and will not be undertaken by the USPTO.**

It is noted that, notwithstanding this decision, the inventors may still **jointly** appoint or revoke a power of attorney.

The application is being forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

cc: Muralidharan P. Arikara
1009 Carter Street
Folsom, CA 95630

Lawrence R. Bawden, Jr.
3720 Devon Court
El Dorado Hills, CA 95762

[1] When acceptance of such papers results in an attorney or agent and at least one applicant or owner prosecuting the application, correspondence will be mailed to the attorney or agent. MPEP 402.10.

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Paper No.

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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APR 15 2005

OFFICE OF PETITIONS

In re Application of	:	
Clark et al.	:	DECISION ON
Application No. 09/834,408	:	PETITION
Filed: April 13, 2001	:	
Atty Docket No. 42390P11097	:	

This is a decision on the petition filed November 15, 2004, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely submit corrected drawings as required in the Notice of Allowability mailed March 26, 2004. The notice set a nonextendable period for reply of three (3) months from the mailing date of the notice. No drawings having been received, the above-identified application became abandoned on June 27, 2004. A courtesy Notice of Abandonment was mailed on August 18, 2004.

With the petition, petitioner filed corrected drawings, and met all other requirements for a grantable petition under 37 C.F.R. §1.137(b). The issue fee and publication fee were timely filed on July 1, 2004 (with certificate of mailing dated Monday, June 28, 2004).

The application file is being forwarded to the Publishing Division for processing into a patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 16

CHARLES LYON
PATENT GROUP
CHOATE HALL & STEWART
53 STATE STREET
BOSTON, MA 02109

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NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of
Stuart L. Schreiber et al
Application No. 09/834,424
Filed: April 13, 2001
Attorney Docket No. 331D USD1

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 1636.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

20 MAY 2002

Allen E. Hoover
LEYDIG, VOIT & MAYER, LTD.
Two Prudential Plaza, Suite 4900
180 North Stetson
Chicago, Illinois 60601-6780

In re Application of:	)	
Richard A. QUATTROCCHI et al	)	
Application No. 09/834,451	)	**DECISION ON REQUESTS FOR**
Filed: April 13, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: TESTING METHOD AND SYSTEM	)	

This is a decision on the Requests To Withdraw from Representation filed February 8, 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 effective date of withdrawal 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.

Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and
Electronic Commerce
(703) 305-9750

cc: Mr. Richard A. Quattrocchi
HOME ACCESS HEALTH CORP.
2401 West Hassell Road, Suite 1510
Hoffman Estates, Illinois 60195-2000

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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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THOMAS J. FINN
SNELL & WILMER L.L.P.
ONE ARIZONA CENTER
400 EAST VAN BUREN
PHOENIX AZ 85004-2202

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FEB 24 2006

OFFICE OF PETITIONS

In re Application of
Emily Chien et al.
Application No. 09/834,478
Filed: April 13, 2001
Attorney Docket No. 40655.1300

ON PETITION

This is a decision on the petition, filed January 19, 2006 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned August 12, 2005 for failure to timely reply to the final Office Action mailed May 11, 2005. An amendment, filed July 5, 2005, was considered and the applicant was advised in an advisory action mailed January 9, 2006, that the amendment did not place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed January 12, 2006.

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.

Petitioner has submitted a Request for Continued Examination (RCE) and requests that the previously filed amendment, filed July 5, 2005, be used as the submission required under 37 CFR 1.114.

The application is being forwarded to Technology Center 3629 for processing of the RCE and amendment.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Technology Center 2100

Paper No. 6

Haynes and Boone, LLP
901Main Street
Suite 3100
Dallas, Texas 75202-3789

In re Application of: David Easter	)	
Application No. 09/834,480	)	
Filed: April 13, 2001	)	
For: METHOD AND SYSTEM FOR	)	**DECISION ON REQUEST FOR**
DEFERRED ASSIGNMENT OF	)	**WITHDRAWAL AS ATTORNEY**
ATTRIBUTES IN A COMPUTER	)	
GRAPHICS SCENE	)	

This is a decision on the Request To Withdraw from Representation filed August 12, 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 effective date of withdrawal 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**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: Steven Rakes, General Partner
Southeast Interactive Technology Funds
630 Davis Drive, Suite 220
Morrisville, North Carolina 27560

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#10

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ALEXANDRIA, VA 22313-1450
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Office of the Director
Group 3600

DORSEY & WHITNEY, LLP
INTELLECTUAL PROPERTY DEPARTMENT
370 SEVENTEENTH STREET
SUITE 4700
DENVER, CO 80202-5647

Paper No. 10

In re application of:
Michael Cristofalo, et al.
Application No. 09/834,500 :
Filed: April 12, 2001 :
For: SYSTEM AND METHOD FOR TARGETING OBJECT ORIENTED AUDIO AND VIDEO CONTENT TO USERS :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on October 28, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney in the above-identified application is not approved because the request does not comply with Item B) above.

As to Item B), there is no indication in the file record of the assignee being the "client", and responsible for payment of legal fees. Absent a 3.73(b) statement, the "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorneys, in this case the inventors. Therefore, the stated reason for withdrawal that "the Assignee for this patent application has requested transfer of the files." is improper. A proper reason for withdrawal as enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866

KJD/cps: 11/25/03

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C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

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DEC 29 2006
OFFICE OF PETITIONS

In re Application of	:	
Mike Cristofalo, et al.	:	
Application No. 09/834,500	:	DECISION ON PETITION
Filed: April 12, 2001	:	TO WITHDRAW
Attorney Docket No. 559442004400	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed September 29, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. 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 Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office [.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "application is being transferred to another attorney", do not meet any the conditions set forth in 37 CFR 10.40.

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

There are no pending office actions at the present time.

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: MARC KAUFMAN, ESQ.
NIXON PEABDY LLP
401 9TH STREET, NW
SUITE 900
WASHINGTON, DC 20004

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C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN VA 22102

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MAY 17 2007

OFFICE OF PETITIONS

In re Application of :
Mike Cristofalo, et al. :
Application No. 09/834,500 : DECISION ON PETITION
Filed: April 12, 2001 : TO WITHDRAW
Attorney Docket No. 559442004400 : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed January 17, 2007.

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 Adam Keser on behalf of all attorneys of record who are associated with customer No. 43997.

All attorneys/agents associated with the Customer Number 43997 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: ACTV, INC.
225 PARK AVENUE SOUTH
NEW YORK, NY 10003

cc: MARK KAUFMAN, ESQ.
NIXON PEABODY, LLP
401 9TH STREET NW
SUITE 900
WASHINGTON, DC 20004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/834,500	04/12/2001	Mike Cristofalo	5217.00

CONFIRMATION NO. 5803

OC000000023887297

43997
OPTV/MOFO
C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN, VA 22102

Date Mailed: 05/16/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 01/17/2007.

- 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.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199
FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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MAY 17 2007

OFFICE OF PETITIONS

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C/O MORRISON & FOERSTER LLP
1650 TYSONS BOULEVARD, SUITE 300
MCLEAN VA 22102

In re Application of
Mike Cristofalo, et al.
Application No. 09/834,500
Filed: April 12, 2001
Attorney Docket No. 559442004400

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed January 17, 2007.

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 Adam Keser on behalf of all attorneys of record who are associated with customer No. 43997.

All attorneys/agents associated with the Customer Number 43997 have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the assignee of the entire interest at the first copied address below until otherwise properly notified by the applicant.

There are no pending Office actions at the present time.

Telephone inquiries concerning this decision should be directed to undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: ACTV, INC.
225 PARK AVENUE SOUTH
NEW YORK, NY 10003

cc: MARK KAUFMAN, ESQ.
NIXON PEABODY, LLP
401 9TH STREET NW
SUITE 900
WASHINGTON, DC 20004

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. 6

Judith Szepesi
Blakely, Sokoloff, Taylor & Zafman
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

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JUN 06 2002

OFFICE OF PETITIONS

In re Application of
Todd J. Souvignier
Application No. 09/834,553
Filed: April 12, 2001
Attorney Docket No. 004963.P002

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(f)

This is a decision on the petition filed March 14, 2002 and supplemented on May 24, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

This application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by: (1) the reply which is met by notification of such filing in a foreign country or under a multinational treaty; (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition has been found in compliance with the 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of August 22, 2002 accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to Marianne Morgan at (703) 306-3475.

This application is being forwarded to Technology Center Art Unit 2154 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

John P. Wooldridge
252 Kaipii Pl.
Kihei HI 96753

In re Application of	:	
RUBENCHIK, ALEXANDER M.	:	
Application No. 09/834554	:	**DECISION ON PETITION**
Filed: April 12, 2001	:	
Attorney Docket No. P1-19	:	

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent & Trademark (USPTO) via facsimile transmission on September 19, 2005.

The petition is **DISMISSED**.

The above-identified application was held abandoned for applicant's failure to timely pay the issue fee, as required in the Notice of Allowance and Fee(s) Due mailed April 20, 2004. The Notice of Abandonment, mailed on October 8, 2004 indicates, "The submitted fee of $0 is insufficient. A balance of $1630 is due".

The Office acknowledges receipt of Part B – Fee(s) Transmittal via facsimile transmission on July 20, 2004 authorizing that the Issue Fee be charged to Deposit Account No. 501330. On October 6, 2004 when an attempt was made by the Office of Finance to charge the fees, there were insufficient funds in the Deposit Account to charge the required fee.

37 CFR 1.25 (a) and (b), which states in part:

> 1.25(a) ...An amount sufficient to cover all fee, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted."
>
> 1.25 (b) ...An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

In light of the non-compliance with 37 CFR 1.25, the holding of abandonment cannot be withdrawn.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

- ■ Under 37 CFR 1.137(a), a petition for the revival of an ***unavoidable*** abandoned application

- ■ Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

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

Telephone inquires concerning this decision matter may be directed to the undersigned at 703 308-9250 Ext. 164.

Kendrick Spruill
Office of the Director
Office of Patent Publications

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DAC/ IFW

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

John P. Wooldridge
252 Kaipii Pl.
Kihei HI 96753

In re Application of	:	
RUBENCHIK, ALEXANDER M.	:	
Application No. 09/834554	:	**DECISION ON PETITION**
Filed: April 12, 2001	:	
Attorney Docket No. P1-19	:	

This is a decision on the Petition To Withdraw Holding Of Abandonment, received in the United States Patent & Trademark (USPTO) via facsimile transmission on September 19, 2005.

The petition is **DISMISSED**.

The above-identified application was held abandoned for applicant's failure to timely pay the issue fee, as required in the Notice of Allowance and Fee(s) Due mailed April 20, 2004. The Notice of Abandonment, mailed on October 8, 2004 indicates, "The submitted fee of $0 is insufficient. A balance of $1630 is due".

The Office acknowledges receipt of Part B – Fee(s) Transmittal via facsimile transmission on July 20, 2004 authorizing that the Issue Fee be charged to Deposit Account No. 501330. On October 6, 2004 when an attempt was made by the Office of Finance to charge the fees, there were insufficient funds in the Deposit Account to charge the required fee.

37 CFR 1.25 (a) and (b), which states in part:

> 1.25(a) ...An amount sufficient to cover all fee, services, copies, etc., requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted."
>
> 1.25 (b) ...An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

In light of the non-compliance with 37 CFR 1.25, the holding of abandonment cannot be withdrawn.

Applicant may seek relief by filing a petition for Revival of Abandoned Application under CFR § 1.137 (a) or (b). (Forms are available at USPTO website http://www.uspto.gov)

■ ■ Under 37 CFR 1.137(a), a petition for the revival of an ***unavoidable*** abandoned application

■ Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

By mail: Mail Stop Petitions

Commissioner for Patents

Office of Petitions

P O Box 1450
Alexandria, VA 22313-1450

Telephone inquires concerning this decision matter may be directed to the undersigned at 703 308-9250 Ext. 164.

Kendrick Sprull
Office of the Director
Office of Patent Publications

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Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 03-02

Paper No. 7

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

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MAR 1 9 2002

OFFICE OF PETITIONS

In re Application of	:	
Keith, Little, Van Eerdewegh,	:	
Dupuis, Del Mastro, Simon, Allen,	:	DECISION REFUSING STATUS
and Pandit	:	UNDER 37 CFR 1.47(a)
Application No. 09/834,597	:	
Filed: 13 April, 2001	:	
Attorney Docket No. 2976-4039US1	:	

This is in response to the petition filed under 37 CFR 1.47(a)[1] on 26 November, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 13 April, 2001, without an executed oath or declaration. Accordingly, on 25

---

[1]A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

June, 2001, Initial Patent Examination Division mailed a Notice to File Missing Parts of Application, requiring a signed oath or declaration and a surcharge for its late filing. In response, on 26 November, 2001,[2] petitioners filed the present petition with authorization to charge the petition fee, the late filing surcharge, a three (3) month extension of time, basic filing fee, the late filing surcharge, a two (2) month time extension, the present petition, and an executed declaration naming Tim Keith, Randall Little, Paul Van Eerdewegh, Josee Dupuis, Richard Del Mastro, Jason Simon, Kristina Allen, and Sunil Pandit as joint inventors signed by all joint inventors except Pandit on behalf of themselves and joint inventor Pandit. The present petition asserts that a copy of the application was sent to joint inventor Pandit via Federal Express on two occasions, but that joint inventor Pandit has not signed and returned the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The petition lacks item (2). In regards to item (3). The declaration does not state the citizenship of the non-signing inventor.[3] A statement of the inventor's citizenship is a statutory requirement and cannot be waived.[4] A new oath or declaration, signed by all of the signing inventors on behalf of themselves and the non-signing inventor in compliance with 37 CFR 1.63 and 1.67 is required. Additionally, the declaration submitted with the present petition is defective in that it contains non-initialed and/or non-dated changes.[5] It is also noted that the declaration states that applicants are claiming the benefit under 35 U.S.C. § 119(e) to Application No. 09/548,797. The benefit under 35 U.S.C. § 119(e) can only be

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[2]As 25 November, 2001, fell on Sunday, this petition was timely filed.

[3]MPEP 605.01.

[4]35 U.S.C. § 115, MPEP 605.01.

[5]MPEP 602.01. See 37 CFR 1.52(c).

claimed to a provisional application, and the application listed, No. 09/548,797, is not a provisional application. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67 is required with any renewed petition. Lastly, it noted that joint inventor Del Mastro has indicated his citizenship is "British". This is not an appropriate citizenship designation. Office PALM records will indicate that joint inventor Del Mastro is a citizen of the United Kingdom.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

DWood

Douglas I. Wood
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
www.uspto.gov
DRW 08-02

Paper No. 11

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

COPY MAILED

AUG 0 7 2002

OFFICE OF PETITIONS

In re Application of	:
Keith, Little, Van Eerdewegh,	:
Dupuis, Del Mastro, Simon, Allen,	: DECISION ACCORDING STATUS
and Pandit	: UNDER 37 CFR 1.47(a)
Application No. 09/834,597	:
Filed: 13 April, 2001	:
Attorney Docket No. 2976-4039US1	:

This is in response to the renewed petition filed under 37 CFR 1.47(a)[1] on 23 July, 2002.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Sunil Pandit, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, the petitioners have established, via the declaration of registered patent agent Caryn DeHoratius, that a copy of the above-identified application was sent via Federal Express to the non-signing inventor's last known address on two occasions, but that the non-signing inventor oral refused, during a telephone, to review the application papers and sign the declaration naming him as a joint inventor along with Tim Keith, Randall Little, Paul Van Eerdewegh, Josee Dupuis, Richard Del Mastro, Jason Simon, and Kristina Allen, unless he was paid to do so.

---

[1]A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the declaration. Notice of the filing of this application will also be published in the Official Gazette.

As the petition fee was not previously paid, the fee of $130.00 will be charged to counsel's deposit account, No. 13-4500, as authorized in the present request for reconsideration.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

Douglas I. Wood
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
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 08 02

Sunil Pandit, Ph.D.
353 W. Side Drive
Apt. 202
Gaithersburg, MD 20878-3028

COPY MAILED

AUG 0 7 2002

OFFICE OF PETITIONS

In re Application of
Keith et al.
Application No. 09/834,597
Filed: 13 April, 2001
For: NOVEL HUMAN GENE RELATING TO RESPIRATORY DISEASES, OBESITY, AND INFLAMMATORY BOWEL DISEASE

Dear Dr. Pandit:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. 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 1-800-972-6382 (outside the Washington D.C. area).

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

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

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

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AUG 0 7 2002

OFFICE OF PETITIONS

In re Application of	:
Keith, Little, Van Eerdewegh,	:
Dupuis, Del Mastro, Simon, Allen,	: DECISION ACCORDING STATUS
and Pandit	: UNDER 37 CFR 1.47(a)
Application No. 09/834,597	:
Filed: 13 April, 2001	:
Attorney Docket No. 2976-4039US1	:

This is in response to the renewed petition filed under 37 CFR 1.47(a)[1] on 23 July, 2002.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventor, Sunil Pandit, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, the petitioners have established, via the declaration of registered patent agent Caryn DeHoratius, that a copy of the above-identified application was sent via Federal Express to the non-signing inventor's last known address on two occasions, but that the non-signing inventor oral refused, during a telephone, to review the application papers and sign the declaration naming him as a joint inventor along with Tim Keith, Randall Little, Paul Van Eerdewegh, Josee Dupuis, Richard Del Mastro, Jason Simon, and Kristina Allen, unless he was paid to do so.

---

[1]A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee; and

(4) a statement of the last known address of the non-signing inventor.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the declaration. Notice of the filing of this application will also be published in the Official Gazette.

As the petition fee was not previously paid, the fee of $130.00 will be charged to counsel's deposit account, No. 13-4500, as authorized in the present request for reconsideration.

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
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
WASHINGTON, D.C. 20231
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Sunil Pandit, Ph.D.
353 W. Side Drive
Apt. 202
Gaithersburg, MD 20878-3028

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AUG 0 7 2002

OFFICE OF PETITIONS

In re Application of
Keith et al.
Application No. 09/834,597
Filed: 13 April, 2001
For: NOVEL HUMAN GENE RELATING TO RESPIRATORY DISEASES, OBESITY, AND INFLAMMATORY BOWEL DISEASE

Dear Dr. Pandit:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. 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 1-800-972-6382 (outside the Washington D.C. area).

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK NY 10154-0053

UNITED STATES 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. 7

MANELLI DENISON & SELTER
2000 M STREET NW, SUITE 700
WASHINGTON, DC 20036-3307

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SEP 2 6 2003

OFFICE OF PETITIONS

In re Application of	:	
Stephen McRobert et al	:	
Application No. 09/834,647	:	DECISION GRANTING PETITION
Filed: April 16, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 95-393	:	

This is a decision on the petition, filed August 15, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on January 30, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of January 1, 2004 has been mailed under separate cover.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 2185 for examination in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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DORSEY & WHITNEY
INTELLECTUAL PROPERTY DEPARTMENT
370 SEVENTEENTH STREET
SUITE 4700
DENVER CO 80202-5647

COPY MAILED

JAN 1 1 2005

OFFICE OF PETITIONS

NOTICE

In re Application of :
Meyer et al :
Application No. 09/834,649 :
Filed: April 16, 2001 :
Attorney Docket No. 12084 :

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.

There is no indication that the person signing the instant notification 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.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

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

cc:

SCHWABE, WILLIAMSON & WYATT, P.C.
PACWEST CENTER, SUITES 1600-1900
1211 SW FIFTH AVENUE
PORTLAND, OREGON 97204

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
WWW.USPTO.GO

JJGJr: 04-03

Paper No: 13

WELLS ST. JOHN ROBERTS
GREGORY & MATKIN P.S.
601 W. FIRST AVENUE
SUITE 1300
SPOKANE WA 99201-3828

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APR 1 7 2003

OFFICE OF PETITIONS

In re Application of: :
Tran : ON PETITION
Filed: 21 April, 2001 :
Application No. 09/834,660 :
Docket No.: MI22-1637 :

This is a decision on the petitions filed herein on 17 January, and resubmitted on March 4 and March 10, 2003, under 37 C.F.R. §1.137(a)[1] and alternatively under 37 C.F.R. §1.137(b)[2] to revive the above-identified application, and in light of the allegations therein (as well as the express petition) also considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.[3]

---

[1] A Petition filed under the provisions of 37 C.F.R. §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 an application for 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 required by 37 C.F.R. §1.17(l);
(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the reply due date until the filing of a grantable petition pursuant to the is paragraph was unavoidable; 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).

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).

[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.)

[3] 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

The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition under:

- 37 C.F.R. §1.181 is **GRANTED**;
- 37 C.F.R. §1.137(a) is **DISMISSED as moot**, and
- 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record indicates that:

- it appeared that applicant failed to reply timely and properly to the non-final Office action mailed on 30 January, 2002, and due (absent extension of time) on or before 30 April, 2002;
- the application was deemed abandoned after midnight 30 April, 2002;
- Notice of Abandonment no was mailed before the filing of the instant petition, however, Petitioner alleges that he contacted the Examiner and learned of the abandonment;[4]
- Petitioner contends as part of his showing that he forwarded via US Postal Service Express Mail a response to the 30 January, 2002, Office action on 30 April, 2002, and supports this allegation with a copy, *inter alia*, of the Express Mail Label No. EV077327446US, his statement (James D. Shaurette (Reg. No. 39,833)) and that of his assistant (Jane E. Boone);

---

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. * * *

[4] Petitioner's statement dates this contact as "January 7, 2002," however this apparently is a typographical error and is intended to be January 7, 2003, and is so interpreted. If this interpretation is incorrect, Petitioner must notify the Office.

- a review of Office record clearly indicates that the reply referenced by Petitioner indeed was filed herein on 30 April, 2002;

- contemporaneously with the filing of the instant petition (with fee(s)), Petitioner submitted a copy of the referenced reply.

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[5]

CONCLUSION

Accordingly, the petition to:

- to withdraw the holding of abandonment as considered under 37 C.F.R. §1.181 hereby is **granted**;

- revive as to unavoidable delay under 37 C.F.R. §1.137(a) is **dismissed as moot**; and

- revive as to unavoidable delay under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The petition fee is waived and the fee (previously charged ($1,300.00) is credited to Deposit Account 20-0925, as previously authorized.

The instant application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

[5] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WILLIAM K. BAXTER
GODFREY & KAHN, S.C.
780 NORTH WATER STREET
MILWAUKEE, WI 53202

In re Application of	:	
Robert W. Pries	:	COPY MAILED
Application No. 09/834,672	:	ON PETITION
Filed: April 13, 2001	:	MAY 1 0 2005
Attorney Docket No. 056267-0003	:	OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.173(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 within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed June 10, 2004, 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 amendment submitted on December 14, 2004 did 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 December 11, 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 an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the amendment to the final Office of June 4, 2004 is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3635.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

MAILED

JUL 30 2004

Technology Center 2100

In re Application of:
Richard SADOWSKY
Application No. 09/834,703
Filed: April 12, 2001
For: METHOD AND APPARATUS FOR AUTOMATICALLY UNINSTALLING SOFTWARE ON A NETWORK

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed June 3, 2004.

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 withdrawal 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.**

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

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

cc: Edward J. Radlo
Sonnenschein Nath & Rosenthal LLP
685 Market Street
6th Floor
San Francisco, CA 94105

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. 9

Morrison & Foerster
755 Page Mill Road
Palo Alto, CA 94304-1018

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OCT 0 1 2002

OFFICE OF PETITIONS

In re Application of :
Chaim Mendel Roifman et al. :
Application No. 09/834,728 :
Filed: April 12, 2001 :
Attorney Docket No. 509942000100 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 26, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to respond to the Notice to File Missing Parts (Notice) mailed May 30, 2001, which set a response period of two-months from the mail date of the Notice. A four-month extension of time was obtained on January 9, 2002 (certificate of mailing dated November 30, 2001). Accordingly, the application became abandoned on November 31, 2002.

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

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Latrice Bond

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6-15-05

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 6806659

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.

Check claims

Thank You For Your Assistance

Ennis Young
Certificates of Correction Branch
Tel. No. 703-305-8309

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 as shown

Joseph K. McKane
JOSEPH K. McKANE
~~SUPERVISORY PATENT EXAMINER~~
TECHNOLOGY CENTER 1600

SPE — 1626 **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

Richard A. Jordan
P.O. Box 81363
Wellesley Hills, MA 02481-0004

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OCT 1 0 2002

OFFICE OF PETITIONS

In re Application of :
Stein et al. :
Application No. 09/834,736 :
Filed: April 14, 2001 :
Attorney Docket No. MBE-003 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 12, 2002, to revive the above-identified application. This is also a decision on the petition under 37 CFR 1.48.

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

The petition under 37 CFR 1.48 is **dismissed as moot**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed June 8, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 9, 2001.

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

Petitioner requests deletion of one of the inventors per 37 CFR 1.48. Per 37 CFR 1.48(f)(1),

> If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63 by any of the inventors, the first submission of an executed oath or declaration under § 1.63 by any of the inventors during the pendency of the application will act to correct the earlier identification of inventorship.

Since a petition under 37 CFR 1.48 is unnecessary to correct the inventorship, the petition is dismissed as moot and the petition fee of $130 will be scheduled to be refunded.

The file is now being forwarded to the Office of Initial Patent Examination for further processing.

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

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

UNITED STATES 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. 15

WILLIAM H. DIPPERT, ESQ.
REED SMITH LLP
599 LEXINGTON AVENUE
29TH FLOOR
NEW YORK, NY 10022-7650

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SEP 14 2004

OFFICE OF PETITIONS

In re Application of	:	
Stein, Gideon P.	:	
Application No. 09/834,736	:	ON PETITION
Filed: April 14, 2001	:	
Attorney Docket No. 383/03634	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 30, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed January 31, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 1, 2003. A Notice of Abandonment was mailed February 2, 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 3600 for further examination on the merits.

Telephone inquiries should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after September 28, 2004 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

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.
09/834,760	04/12/2001	Richard C. Austin	19874-000410	4286

20350 7590 01/02/2008
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER
ANGELL, JON E

ART UNIT	PAPER NUMBER
1635	

MAIL DATE	DELIVERY MODE
01/02/2008	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

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JAN - 2 2008

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

In re Application of	:
Richard C. Austin et al	:
Serial No.: 09/834,760	: PETITION DECISION
Filed: April 21, 2001	:
Attorney Docket No.: 019874-000410US	:

This is a decision on the PETITION FOR ACCEPTANCE OF COLOR DRAWINGS UNDER 37 CFR 1.84(a)(2). The petition was filed October 30, 2007. Entry of color drawings requires: 1) three sets of the color drawings, 2) a proper amendment to the specification indicating color photographs or drawings are present in the file, and 3) the required fee under 37 CFR 1.17(h).

A review of the application record indicates that the petition meets all of the requirements for acceptance of color drawings. This is not to be construed that all of the drawings are accepted, only that the color drawings are acceptable.

The petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile transmission at 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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VARIAN INC.
3120 HANSEN WAY, D-102
PALO ALTO, CA 94304

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JUL 2 6 2005

OFFICE OF PETITIONS

In re Patent No. 6,833,111	:	
Issue Date: December 21, 2004	:	
Application No. 09/834,769	:	ON PETITION
Filed: April 13, 2001	:	
Attorney Docket No. 02-18 US	:	

This is a decision on the petition under 37 CFR 1.183, filed June 23, 2005, which is being treated as a petition under 37 CFR 3.81(b) [1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is **granted**.

Telephone inquires concerning this matter may be directed to Wan Laymon at (571) 272-3220. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

[1] *See* Official Gazette of June 22, 2004

OIPE JC124
NOV 1 4 2003
PATENT & TRADEMARK OFFICE

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 Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); 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).

PLEASE NOTE the following information about the Filing Receipt:

- The articles such as "**a**," "**an**" and "**the**" are not included as the first words in the title of an application. They are considered to be unnecessary to the understanding of the title.
- The words "**new**," "**improved**," "**improvements in**" or "**relating to**" are not included as first words in the title of an application because a patent application, by nature, is a new idea or improvement.
- The title may be truncated if it consists of more than 500 characters (letters and spaces combined).
- The docket number allows a maximum of 25 characters.
- If your application was submitted under 37 CFR 1.10, your filing date should be the "date in" found on the Express Mail label. If there is a discrepancy, you should submit a request for a corrected Filing Receipt along with a copy of the Express Mail label showing the "date in."
- The title is recorded in sentence case.

Any corrections that may need to be done to your Filing Receipt should be directed to:

Assistant Commissioner for Patents
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Washington, DC 20231

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Paper No. 25

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

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JUN 1 5 2004

OFFICE OF PETITIONS

In re Application of :
Daniel P. Silver et al :
Application No. 09/834,778 :
Filed: April 12, 2001 :
Attorney Docket No. 20363-011 :

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 14, 2003, to accept an unintentionally delayed claim under 35 U.S.C.§ 119(e) for the benefit of prior-filed provisional Application No. 60/196,338, filed April 12, 2000.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000.

Petitioner has submitted on November 14, 2003, an amendment to the first sentence of the specification following the title to include a reference to prior-filed provisional Application No. 60/196,338, filed April 12, 2000.

The instant pending nonprovisional application was filed on April 12, 2001, and was pending at the time of filing of the instant petition. While a reference to the prior-filed provisional application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the declaration filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR 1.78(a)(6) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR 1.78(a)(5). However, on the other hand, if the USPTO does not note the claim for priority to the provisional application in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR 1.78(a)(6).[1] In the instant case, the Office noted the claim for priority of provisional

[1] Note 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

Application No. 60/196,338 in the declaration filed with the application and supplemented on July 30, 2001, as shown by its inclusion on the filing receipt.

In view of the above, the $1330 petition fee submitted is unnecessary and will be refunded to petitioner's deposit account in due course.

Any questions concerning this decision on petition may be directed to Karen Creasy at (703)305-8859. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center AU 1755 for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(6) for the benefit of prior-filed provisional Application No. 60/196,338, filed on April 12, 2000.

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
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Paper No. 30

MINTZ LEVIN COHN FERRIS
GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER
BOSTON, MA 02111

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JUL 2 3 2004

OFFICE OF PETITIONS

In re Application of	:
Daniel P. Silver et al	:
Application No. 09/834,778	: DECISION GRANTING PETITION
Filed: April 12, 2001	: UNDER 37 CFR 313(c)(2)
Attorney Docket No. 20363-011	:

This is a decision on the petition, filed July 21, 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 6, 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.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 1636 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

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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 STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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www.uspto.gov

Sadler, Breen, Morasch & Colby, ps
422 W. Riverside Ave, Suite 424
Spokane WA 99201

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AUG 22 2008

In re Application of	:	
Edward A. Hubbard	:	
Application No.: 09/834785	:	DECISION ON
Filing or 371(c) Date: 04/13/2001	:	PETITION
Attorney Docket Number: NING0008	:	

This is a decision in response to the petition to withdraw holding of abandonment, filed February 23, 2007. The petition is properly treated as a petition to withdraw the holding of abandonment based upon failure to receive an Office action under 37 CFR 1.181. The delay in treating this petition is regretted.

This Petition is hereby **dismissed**.

Any further petition 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. Any reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due (Notice"), mailed July 25, 2006. The Notice set a three (3) month period for reply. No extensions of time were available. No reply having been received, the application became abandoned on October 26, 2006. A Notice of Abandonment was mailed December 26, 2006.

Petition under 37 CFR 1.181

Petitioner herein, the law firm of Fish & Richardson, files the present petition and asserts that the Notice was never received. In support of this assertion, Petitioner states that a search of the physical file and docket records indicate that the Notice was not received. Petitioner also files a copy of a docket record from the law firm of Winstead Sechrest & Minick, the attorneys of record at the time the Notice was mailed. A review of the copy of the docket records from Winstead Sechrest & Minick indicate that the Notice was not received. No statement from anyone at the law firm of Winstead Sechrest & Minick, attesting to a search of the file jacket and docket records has been conducted, or that the search of the physical file and docket records indicate that the Notice was not receive, has been filed.

It is also noted that the law firm of Fish & Richardson are no longer the attorneys of record in the application.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

> 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 describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. 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). (Emphasis supplied)

MPEP 711.03(c)

Analysis

Applicant has failed to demonstrate that the Notice was not received. In support of the petition, Petitioner states that a search of the physical file and docket records indicate that the Notice was not received; however, Petitioner was not the practitioner of record at the time the Notice was mailed. The law firm of Winstead Sechrest & Minick, were the attorneys of record at the time the Notice was mailed, and a copy of the docket records from Winstead Sechrest & Minick was filed; however, no statement from anyone at the law firm of Winstead Sechrest & Minick, attesting to non-receipt of the Notice, or attesting to a search of the file jacket and docket records, or that the search of the physical file and docket records indicate that the Notice was not receive, has been filed. Moreover, no copy of the master docket for the firm of Winstead Sechrest & Minick has been filed. A copy of the master docket record showing all replies docketed for a date three (3) months from the mail date of the Notice is required.

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statement(s), copies of docket records and/or file jacket.

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

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Sadler, Breen, Morasch & Colby, ps
422 W. Riverside Ave, Suite 424
Spokane WA 99201

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OFFICE OF PETITIONS

In re Application of	:	
Edward A. Hubbard	:	
Application No.: 09/834785	:	DECISION ON
Filing or 371(c) Date: 04/13/2001	:	PETITION
Attorney Docket Number: NING0008	:	

This is a decision in response to the renewed petition under 37 CFR 1.137, filed September 18, 2008. The petition is properly treated as a renewed petition to withdraw the holding of abandonment based upon failure to receive an Office action under 37 CFR 1.181.

This Petition is hereby **dismissed**.

Any further petition 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. Any reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due (Notice"), mailed July 25, 2006. The Notice set a three (3) month period for reply. No extensions of time were available. No reply having been received, the application became abandoned on October 26, 2006. A Notice of Abandonment was mailed December 26, 2006.

February 23, 2007 Petition under 37 CFR 1.181

Petitioner, the law firm of Fish & Richardson, filed a petition on February 23, 2007 and asserted that the Notice was never received. In support of this assertion, Petitioner stated that a search of the physical file and docket records indicated that the Notice was not received. Petitioner also filed a copy of a docket record from the law firm of Winstead Sechrest & Minick, the attorneys of record at the time the Notice was mailed. A review of the copy of the docket records from Winstead Sechrest & Minick indicated that the Notice was not received. No statement from anyone at the law firm of Winstead Sechrest & Minick, attesting to a search of the file jacket and docket records has been conducted, or that the search of the physical file and docket records indicate that the Notice was not receive, was filed.

It was also noted that the law firm of Fish & Richardson were no longer the attorneys of record in the application.

August 22, 2008 Decision dismissing petition

The petition was dismissed in a Decision mailed August 22, 2008. The Decision dismissing the petition noted that no statement from anyone at the law firm of Winstead Sechrest & Minick, attesting to non-receipt of the Notice, or attesting to a search of the file jacket and docket records, or that the search of the physical file and docket records indicate that the Notice was not receive, was filed. Moreover, no copy of the master docket for the firm of Winstead Sechrest & Minick was filed. A statement from a person with knowledge of the docketing system at the law firm of Winstead Sechrest & Minick, attesting to non-receipt of the Notice, or attesting to a search of the file jacket and docket records, or that the search of the physical file and docket records indicate that the Notice was not receive, was required. Also, a copy of the master docket record showing all replies docketed for a date three (3) months from the mail date of the Notice was required.

The present renewed petition

Applicant files the present renewed petition, co-executed by Robert A. Voigt Jr., of the law firm of Winstead Sechrest & Minick, asserting that the law firm of Winstead Sechrest & Minick does not maintain a Master Docket for all its docketed items. Applicant refers to Exhibit "B", the individual docket record for the application in question.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

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

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

MPEP 711.03(c)

Analysis

Applicant asserts that the law firm of Winstead Sechrest & Minick does not maintain a Master Docket for all its docketed items. In view of this assertion, and the unavailability o a copy of the master docket record, the Office is unable to account for the situation where the Office action may have been received and mis-docketed. Further to this, it is noted that the law firm of Winstead Sechrest & Minick uses a post office box for receipt of correcpondence from this Office. Accordingly, as noted in the Decision dismissing the petition mailed August 22, 2008, a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO, is required. The statement should establish that the docketing system is sufficiently reliable. The statement should address the process whereby correspondence from this Office and received at the post office box is entered into the relevant application files. Petitioner is reminded that 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.

The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statement(s), copies of docket records and/or file jacket.

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

By mail: Director for Patents
PO Box 1450
Alexandria, VA 22313-1450

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

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

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

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Sadler, Breen, Morasch & Colby, ps
422 W. Riverside Ave, Suite 424
Spokane WA 99201

COPY MAILED

FEB 09 2009

OFFICE OF PETITIONS

In re Application of	:	
Edward A. Hubbard	:	
Application No.: 09/834785	:	DECISION ON
Filing or 371(c) Date: 04/13/2001	:	PETITION
Attorney Docket Number: NING0008	:	

This is a decision in response to the renewed petition under 37 CFR 1.137, filed December 29, 2008. The petition is properly treated as a renewed petition to withdraw the holding of abandonment based upon failure to receive an Office action under 37 CFR 1.181.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due (Notice"), mailed July 25, 2006. The Notice set a three (3) month period for reply. No extensions of time were available. No reply having been received, the application became abandoned on October 26, 2006. A Notice of Abandonment was mailed December 26, 2006.

With the prior and present renewed petitions, Applicant has demonstrated non-receipt of the Notice by a preponderance of the evidence.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

No petition fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2157 for re-mailing of the Notice of Allowance and Issue Fee Due and Notice of Allowability and for re-starting the period for reply.

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

/Derek L. Woods/
Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Barry W. Chapin, Esq.
Chapin & Huang, L.L.C.
Westborough Office Park
1700 West Park Drive
Westborough, MA 01581

MAILED

MAY 17 2006

TECHNOLOGY CENTER 2100

In re Application of: Jean-Philippe CHAMPAGNE Application No. 09/834,796 Attorney Docket No. CIS01-02(3665) Filed: April 13, 2001 For: METHODS AND APPARATUS FOR TRANSMITTING INFORMATION IN A NETWORK	))))))	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR §1.181

This is a decision on the petition to withdraw the holding of abandonment, under 37 CFR §1.181, filed on May 16, 2005.

The instant application became abandoned for failure to timely respond to the Office action mailed August 13, 2004. A notice of abandonment was mailed on March 22, 2005. A grantable petition must include a copy of the response and proof of timely filing of the response. An Office generated FAX receipt that properly identify the contents of the submission, A stamped post card receipt with an indication of the documents filed therewith, or properly used certificates of mail and transmission that include a 37 CFR §1.8(b)(3) statement will be acceptable. No fee is required.

Petitioner has provided evidence in the petition that includes: a copy of the response and transmittal form having a certificate of mailing date under 37 C.F.R. §1.8 of November 15, 2004; copy of post card receipt (bearing a USPTO date stamp of November 18, 2004); copy of check in the amount of $72.00 for additional claims fee; authorization to charge (additional) fees to deposit account 50-0901; and certificate of mailing and personal knowledge declarant statements by Tammy L. Rosado and Jeffrey J. Duquette (treated under 37 CFR §1.8(b)(3)).

In addition, it is noted that the response filed November 15, 2004 has since been matched with the application and is currently part of the file record. Declarant Jeffrey J. Duquette indicates that the application serial number was misidentified on some of the papers filed as 10/834,796, rather than 09/834,796. This typographical error may have resulted in the delay in matching the response to the correct application.

Petitioner has established that a response was timely filed on November 15, 2004. Since all of the criteria set forth above have been met, the petition is **GRANTED**. The Notice of Abandonment is hereby **WITHDRAWN**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to **WITHDRAW** the holding of abandonment (restore the instant application to pending status), to **PROCESS** the amendment filed November 15, 2004 and to **CHARGE** and **REFUND** fees as indicated below. The application will then be forwarded to the examiner for prompt action on the merits.

Note, the fee for additional claims ($72) will be **CHARGED** to deposit account 50-0901 (since the original check is not available) for the instant application SN 09/834,796 and correspondingly, the fee in the amount of ($72) will be **REFUNDED** to deposit account 50-0901 for case SN **10**/834,796 (originally paid by check).

Brian L. Johnson
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
571-272-3595

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. 7

SILICON VALLEY PATENT GROUP LLP
2350 MISSION COLLEGE BOULEVARD
SUITE 360
SANTA CLARA, CA 95054

COPY MAILED

JUL 2 5 2003

OFFICE OF PETITIONS

In re Application of	:
Ramaprakash H. Sathyanarayan	:DECISION GRANTING PETITION
Application No.09/834,833	:UNDER 37 CFR 1.137(b)
Filed: April 13, 2001	:
Attorney Docket No. M-9213 US	:

This is in response to the communication entitled "Petition to Confirm Good Standing of Patent Application," which is being treated as a under 37 CFR 1.183 to waive the rules such that the filing of the PCT application, which explicitly identified the subject US application, be the notification required by 35 U.S.C. § 122(b)(2)(B)(iii). Alternatively, the petition is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

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

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

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on April 11, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

BACKGROUND

The instant application was filed on April 13, 2001, which included a Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) to not publish the application. The nonpublication request stated:

> I hereby certify that the invention disclosed in the attached application **has not and will not be** the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b).

On April 11, 2002, applicant filed a counterpart international application relating to the subject matter of the above-identified application. Applicant, on April 12, 2002, filed a Request to Rescind Previous Nonpublication Request 35 U.S.C. .122(b)(2))B)(ii), but did not notify the U.S. Patent and Trademark Office (USPTO) that this application was being filed as a counterpart international application. Notification of the filing of the counterpart international application as required by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) was provided at the time of filing of the instant petition.

As the notification to the USPTO of the foreign filing on April 11, 2002 of the counterpart international application did not occur within 45 days of such filing, this application is regarded as abandoned as of midnight on May 26, 2002.

STATUTE AND LEGISLATIVE HISTORY

35 U.S.C. (b)(2)(B) states, in pertinent part:

> (i) If an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).
>
> (ii) **An applicant may rescind a request made under clause (i) at any time**.
>
> (iii) An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the

> application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. **A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned**, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.
>
> (iv) If an applicant rescinds a request made under clause (i) **or** notifies the Director that an application was filed in a foreign country or under a multilateral international agreement specified in clause (i), the application shall be published in accordance with the provisions of paragraph (1) on or as soon as is practical after the date that is specified in clause (i).[1]

The Congressional record explains that, if applicant has requested nonpublication because the application will not be filed "in a foreign country with a publication requirement, subparagraph (B)(iii) imposes a duty on the applicant to notify the Director of this fact. An unexcused failure to notify the Director will result in abandonment of the application." See 145 Cong. Rec. S14,718 (November 17, 1999).

PETITION UNDER 37 CFR 1.183

Applicant contends that notification of foreign filing was made in the above-identified application through the filing of a PCT application which was accompanied by a transmittal letter (Exhibit B) explicitly identifying the above-identified application and that the transmittal letter and PCT application were enclosed in the same envelope. Therefore, the USPTO, as the Receiving Office, was provided with notice by the transmittal letter and that such notice was provided on the same day as the filing of the PCT application because all papers were transmitted in the same envelope. Petitioner further contends that notification was made of the PCT filing in that the USPTO acted on this notification by granting a foreign filing license. Petitioner additionally contends that the USPTO recorded in its computer system that the PCT application was

---

[1] Emphasis added.

a child of the instant application, "again proving that the Commissioner had received 'actual notice' of the filing of the PCT application."

Petitioner requests that, "[t]o the extent the letter in Exhibit B does not identify any other rule of the USPTO, Applicant respectfully requests the Commissioner to retroactively waive such a rule (as of the date of filing of the letter)." However, should the Commissioner determine that the application has been abandoned for failure to satisfy the foreign filing notice requirement of 35 U.S.C. § 122(b)(2)(B)(iii), then petitioner requests that the application be revived pursuant to the provisions of 37 CFR 1.137(b)/(f).

Petitioner's argument that identification of the instant application in a transmittal letter for the filing of a PCT application in the USPTO as the Receiving Office was notification to the USPTO of a foreign filing is not persuasive. In this regard, 37 CFR 1.213(c) requires the applicant to provide notice, and 37 CFR 1.4(b) provides that each application must be complete in itself. An international application would not be placed into the file of an application that it relies upon for the benefit of an earlier filing date, and so applicant was required to file a separate paper pursuant to 37 CFR 1.4(b) in the above-identified application. Therefore, the mere filing of a PCT application is not the notification required by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c). Petitioner's attention is also directed to 37 CFR 1.4(c), which states:

> Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects.

Pursuant to 37 CFR 1.4(c), the separate paper was required to address a distinct subject, so a notification of foreign filing was required to be on a separate paper from another matter (such as a new application), and so the mere filing of the international application, which references the application number and filing date of the subject application, in the United States Receiving Office would not have been notice of foreign filing.

Petitioner's inclusion of a transmittal letter identifying the instant application in filing a PCT application in the USPTO Receiving Office does not constitute the notice contemplated by 35 U.S.C. 122(b)(2)(B)(iii). Further, as the Office has no authority to waive the 45 day period set forth in 35 U.S.C.

122(b)(2)(B)(iii), the application must be regarded as abandoned. **These are statutory requirements and statutory requirement can not be waived under the provisions of 37 CFR 1.183.**

PETITION UNDER 37 CFR 1.137(f)

Turning now to the alternative petition, a petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) notification of such filing in a foreign country or under a multilateral international agreement;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the notification until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

As authorized, the $1,300 fee required by statute for the petition under 37 CFR 1.137(b) will be charged to petitioner's Deposit Account No. 50-2263.

Any inquiries concerning this decision may be directed to the undersigned at (703)305-8680.

This application is being forwarded to Technology Center Art Unit 2172 to await a reply to the nonfinal Office action of June 6, 2003. Failure to timely reply will again result in the abandonment of the application.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ROSS D. SNYDER & ASSOCIATES, INC.
PO BOX 164075
AUSTIN TX 78716-4075

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OFFICE OF PETITIONS

In re Application of	:	
Parmasad et al.	:	
Application No.: 09/834834	:	ON PETITION
Filing or 371(c) Date: 04/13/2001	:	
Attorney Docket Number:	:	
4293	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed March 9, 2007.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the non-final office action, mailed December 6, 2005. The Office action set a three (3) period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on March 7, 2006. A Notice of Abandonment was mailed July 7, 2006.

Applicant files the present petition and Amendment in response to the Office action. Accordingly, the petition is granted.

This application is being referred to Technology Center Art Unit 3623 for processing of the Amendment filed with the petition in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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

UR
PAPER NO. 7

FEB 1 2002

In re Application of	:	
Joseph D. Schroeder et al.	:	DECISION
Serial No. 09/834,842	:	ON
Filed: April 13, 2001	:	PETITION
For: ANTI-MICROBIAL PACKAGING	:	UNDER
POLYMER AND ITS METHOD OF USE	:	M.P.E.P.708.02 V

This is in response to the petition filed January 9, 2002, requesting that the above-identified application be granted Special Status under Sections 708.02 (V) of the MPEP and 37 CFR 1.102(c).

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
Technology Center 1700
Chemical and Materials Engineering

Mchael Krenicky
St. ONGE STEWARD JOHNSTON & REENS LLC
986 Bedford Street
Stamford, CT 06905-5619

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 09/834 846

DATE : 10-13-05

TO SPE OF : ART UNIT 2116

SUBJECT : Request for Certificate of Correction on Patent No.: 6928565

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

The Submitted Drawings attached in the Request for CC include 2 set of Drawings belong to 2 different Apps Therefore, the Request for CC is Denied.

Thman
10/20/05

SPE

LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

cofc

OIPE IAP15 SEP 22 2005 PATENT & TRADEMARK OFFICE

PATENT / DOCKET NO. 16356.604 (DC-02762)
CUSTOMER NO. 000027683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: La Vaughn F. Watts Jr., et al.	§	U.S. Patent No. 6,928,565
Serial No. 09/834,846	§	
Filed: April 13, 2001	§	Issued: August 9, 2005
For: COMPUTER SYSTEM THERMAL LAP MANAGEMENT METHOD AND APPARATUS	§	

Certificate
SEP 28 2005
of Correction

REQUEST FOR CERTIFICATE OF CORRECTION
UNDER 35 USC 254

Mail Stop Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Denied
10/20/05

Sir:

Applicants hereby request a Certificate of Correction to correct mistakes in the above-identified patent as set forth on the attached form PTO/SB/44. A copy of Letter to Official Draftsperson, along with formal drawings 1 through 9, originally mailed on November 14, 2001, and a copy of return, date-stamped postcard, acknowledging receipt of these documents on January 8, 2002, are attached herewith in support of our Request for Certificate of Correction.

Because the mistakes were incurred through the fault of the Patent and Trademark Office, no fee is believed necessary. However, should any fees be deemed necessary, the Commissioner is hereby authorized to charge any fees which may be required to Deposit Account 08-1394 (16356.604).

Respectfully submitted,

James R. Bell
Registration No. 26,528

Date: 9-20-05

HAYNES AND BOONE, LLP
901 Main Street, Suite 3100
Dallas, Texas 75202-3789
Telephone: 512-867-8407
Facsimile: 214-200-0853

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 Certificate of Correction Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

On 9/20/05

Nishi Pasarya

a-181703_1.DOC

SEP 28 2005

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/3/06

TO SPE OF : ART UNIT 2116

SUBJECT : Request for Certificate of Correction on Patent No.: 6928565 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:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

The submitted drawings attached in the Request for CC dated 9/15/06 are approved

REHANA PERVEEN
SUPERVISORY PATENT EXAMINER
1/30/07
SPE

2116
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MAY 2 6 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON VA 22209-3873

In re Application of
Haihong Zheng, et. al.
Application No. 09/834,877
Filed: April 16, 2001
For: **METHOD AND APPARATUS FOR EFFICIENT ROUTING OF MOBILE NODE PACKETS**

DECISION ON PETITION

This is a decision on the petition filed on March 2, 2005, requesting a complete copy of the Office communication mailed on January 4, 2005.

Petitioner states that the non-final Office action mailed on January 4, 2005, was deficient in that page 2 of the Office action was missing.

MPEP §710.06 [R-2] Situations When Reply Period Is Reset or Restarted, states in part:

> Where the citation of a reference is incorrect or an Office action contains some other defect and this error is called to the attention of the Office within 1 month of the mail date of the action, the Office will restart the previously set period for reply to run from the date the error is corrected, if requested to do so by applicant. If the error is brought to the attention of the Office within the period for reply set in the Office action but more than 1 month after the date of the Office action, the Office will set a new period for reply, if requested to do so by the applicant, to substantially equal the time remaining in the reply period. For example, if the error is brought to the attention of the Office 5 weeks after mailing the action, then the Office would set a new 2-month period for reply. The new period for reply must be at least 1 month and would run from the date the error is corrected. See MPEP § 707.05(g) for the manner of correcting the record where there has been an erroneous citation.

Applicants' petition satisfies the requirements set forth above. However, a review of the record reveals that the non-final Office action was in fact re-mailed on April 22, 2005.

Accordingly, the petition is **Dismissed as moot.**

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
WASHINGTON, D.C. 20231
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Paper No. 9
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MAY 22 2003
OFFICE OF PETITIONS

NIXON PEABODY, LLP
8180 GREENSBORO DRIVE
SUITE 800
MCLEAN, VA 22102

In re Application of :
Pfeiffer, et al. :
Application No. 09/834,905 : ON PETITION
Filed: April 16, 2001 :
Attorney Docket No.: 741438-35 :

This decision in response to the petition filed May 24, 2001 and resubmitted March 3, 2003 in response to the Notice of Incomplete Nonprovisional Application ("Notice") mailed May 11, 2001.

The application was filed April 16, 2001. The Notice mailed May 11, 2003 by the Office of Initial Patent Examination notified applicant that the application had not been accorded a filing date because the application appeared to have been submitted without drawings as required under 35 USC 113.

Petitioner argues that the application as filed included two (2) sheets of formal drawings and has included as proof of mailing and proof of receipt of the items in question a return postcard date stamped by the Office on April 16, 2001. A copy of drawing sheets has been submitted.

The return postcard indicates the enclosure of two (2) sheets of formal drawings. The original drawing sheets submitted with the application papers have not been located. However, in view of the evidence presented, the petition to accord application a filing date of April 16, 2001 is GRANTED.

The petition fee of $130.00 submitted with the instant petition is unnecessary. Petitioner may request of refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

This application will be returned to the Office of Initial Patent Examination for further processing with a filing date of April 16, 2001, thereafter, the application will be forwarded to the Publications Division for processing into a patent.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

Alesia M. Brown
Petitions Attorney
Office of Petitions

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Paper No. 14

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20037

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OFFICE OF PETITIONS

In re Application of
Hirose et al.
Application No. 09/834,946
Filed: April 16, 2001
Attorney Docket No. Q63660

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 1, 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 January 30, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on May 1, 2003. A Notice of Abandonment was mailed on September 4, 2003.

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

The Notice of Appeal filed October 1, 2003, has been entered and made of record. Accordingly, 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.

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 $950.00 extension of time fee submitted with the petition on October 1, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

Enclosed is a copy of the advisory action issued by the examiner against the amendment submitted on April 30, 2003 for petitioner's convenience.

The file is now being forwarded to Technology Center 3700 for further processing.

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

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

Enclosure: Advisory Action

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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OSHA LIANG LLP/Oracle
TWO HOUSTON CENTER
909 FANNIN, SUITE 3500
HOUSTON, TX 77010

Mail Date: 04/20/2010

Applicant	: Mark Gray	: DECISION ON REQUEST FOR
Patent Number	: 7631064	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/835,059	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/13/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1104** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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ROGITZ & ASSOCIATES
750 B STREET
SUITE 3120
SAN DIEGO, CA 92101

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OFFICE OF PETITIONS

In re Application of Nguyen :
Application No. 09/835,101 :
Filing Date: April 13, 2001 :
Attorney Docket No. 50P3986.01 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed March 28, 2006, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a proper reply to the Notice to File Missing Parts of Application (Notice) mailed July 18, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. Although a reply was timely filed, the reply did not include the required fees.

An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on September 19, 2001. A Notice of Abandonment was mailed on October 29, 2003.

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

A request for a four-month extension of time was filed with the petition. As a result, deposit account no. 193195 was charged $1,590 for a four-month extension of time. Payment for an extension of time is unnecessary when reviving an application. Therefore, the Office has credited the $1,590 back to the deposit account.

John Rogitz signed the petition. Rogitz was not an attorney or agent of record at the time the application became abandoned. Therefore, it appears Rogitz was not in a position to have firsthand or direct knowledge of the facts and circumstances of the delay. Nevertheless, the statement by Rogitz that the entire delay was unintentional is being treated as having been made

as the result of a reasonable inquiry into the facts and circumstances of such delay.[1] 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 a portion of the delay from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The Office of Initial Patent Examination will be informed of the instant decision and will take steps to have the application prepared for examination in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

[1] 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).

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JAN 27 2004

LAHIVE & COCKFIELD, LLP.
28 STATE STREET
BOSTON MA 02109

In re Application of	:
Rima Kaddurah-Daouk et al	:
Serial No.: 09/835,119	: PETITION DECISION
Filed: April 13, 2001	:
Attorney Docket No.: MBZ-001	:

This is in response to the petition under 37 CFR 1.181, filed November 20, 2003, for withdrawal of abandonment of the above identified application based on filing of a timely reply. The delay in acting on this petition is regretted.

A review of the file history shows that the examiner mailed a Final Office action to applicants on December 16, 2002, setting a three month shortened statutory period for reply. Applicants replied by filing a Notice of Appeal on June 13, 2003, including a request for a three month extension of time and fees therefor. A Notice of Abandonment was mailed to applicants on September 23, 2003, erroneously. In view of the timely reply the Notice of Abandonment was mailed in error and is withdrawn and the application is restored to pending status with the mailing of this decision

The petition is **GRANTED**.

The time period for filing of an Appeal Brief runs from the date of receipt of the Notice of Appeal, June 13, 2003, and may be extended up to five months under 37 CFR 1.136(a).

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.

John Doll
Director, Technology Center 1600

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MICHAEL L. LOUIE
BEYER WEAVER & THOMAS LLP
P.O. BOX 778
BERKELEY, CA 94704-0778

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OFFICE OF PETITIONS

In re Application of
Jon A. Nichols et al
Application No. 09/835,198
Filed: April 13, 2001
Attorney Docket No. 20-142

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 AU 1743.

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

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WASHINGTON, D.C. 20231
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Paper No. 4

FRISHAUF, HOLTZ, GOODMAN, LANGER & CHICK
767 THIRD AVENUE - 25TH FLOOR
NEW YORK, NY 10017

In re Application of
Sugawara, et al.
Application No. 09/835,205
Filed: April 13, 2001
Attorney Docket No.: 01225/LH
For: OPTICAL PICKUP HAVING TWO WAVELENGTH LASER AND SIMPLE STRUCTURE

ON PETITION

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OFFICE OF PETITIONS

This is a decision on the petition filed August 27, 2001 in response to the Notice of Omitted Item(s) in a Nonprovisional Application ("Notice") mailed June 26, 2001.

The application was filed April 13, 2001. The Notice mailed June 26, 2001 indicates that a filing date of April 13, 2001 had been accorded the application, but that the page 18 of the specification appeared to have been omitted.

The Notice permits applicant to either: (1) establish prior receipt in the PTO of page 18 of the specification or (2) submit the omitted page of specification and accept the date of such submission as the application filing date. An assertion that the missing page of specification was in fact deposited in the PTO with the application papers must made by way of petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioner alleges that the application was deposited with the Office on April 13, 2001 and included 19 pages of specification.

Petitioner has submitted a copy of a postcard date stamped by the Office acknowledging receipt of the application papers, including 19 pages of specification. A copy of page 18 of the specification was supplied with the instant petition.

The original page 18 of the specification submitted with the application papers has not been located. However, in view of the evidence presented, the petition to include page 18 of the specification in the application is **GRANTED**.

Since the original page 18 of the specification cannot be located in the Office, the copy supplied with the instant petition will be substituted in place thereof for examination purposes.

This application will be forwarded to Office of Initial Patent Examination for further processing with a filing date of April

13, 2001, using the copy of page 18 supplied herewith.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

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

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Paper No. 13

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JUN 24 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

COOLEY GODWARD, LLP
3000 EL CAMINO REAL
5 PALO ALTO SQUARE
PALO ALTO, CA 94306

In re Application of
Zehevi
Application No. 09/835,284
Filed: April 12, 2001
For: WIRELESS NETWORK WITH ENHANCED DATA RATE

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as Attorney or Agent and Change of Address filed on May 14, 2004.

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/Agent associated with Customer Number 23419 have been withdrawn.

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 of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Intel Corporation
Mailstop SC4/202
2200 Mission College Boulevard
Santa Clara, CA 95052

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OFFICE OF PETITIONS

INTEL CORPORATION
MAILSTOP SC4/202
2200 MISSION COLLEGE BLVD.
SANTA CLARA, CA 95052

In re Application of	:	DECISION ON PETITION
Ephraim Zehavi	:	
Application No. 09/835,284	:	
Filed: April 12, 2001	:	
Atty Docket No.:	:	
205,136	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed February 22, 2005.

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed September 17, 2004. The Notice set a non-extendable statutory period for reply of three (3) months. Accordingly, the application became abandoned on December 18, 2004. A Notice of Abandonment was mailed January 20, 2005.

With the instant petition Applicant has submitted the issue fee. The loss of entitlement to small entity status has also been entered and made of record.

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

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

Derek L. Woods
Attorney/Advisor
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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Brinks, Hofer, Gilson, & Lione
P.O. Box 10395
Chicago, IL 60610

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APR 16 2010

OFFICE OF PETITIONS

In re Application of
Robert L. Beck et al
Application No. 09/835,288
Filed: April 13, 2001
Attorney Docket No. 3591/1102

: **DECISION**
: **ON**
: **PETITION**

This is a decision on the combined petition filed on December 24, 2008, 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 March 16, 2010 entitled "Supplement to Petition Pursuant to 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application" ("the March 16, 2010 supplement to the combined petition"), and the paper, also filed on March 16, 2010, entitled " Revocation of Former Powers of Attorney and New Power of Attorney by Assignee of Entire Interest" (the March 16, 2010 combined statement under 3.73(b), power of attorney, and change of correspondence address").

The combined petition filed on December 24, 2008, the March 16, 2010 supplement to the combined petition, the March 16, 2010 combined statement under 3.73(b), 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. 12-1216 as authorized on page 2 of the December 24, 2008 combined petition, and on pages 1-2 of the March 16, 2010 supplement to the combined petition.

SUMMARY

The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on December 24, 2008, is **dismissed**. The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on December 24, 2008 and on March 16, 2010, is **granted**. The March 16, 2010 combined statement under 3.73(b), power of attorney and change of correspondence address, is **ineffective**.

DECISION

The Petition under 37 CFR 1.137(a) to Revive an Unavoidably Abandoned Application

On May 14, 2003, a nonfinal Office action was mailed by the Office, setting a three-month shortened statutory period for reply. On January 27, 2004, a notice of abandonment was mailed by the Office, stating that the application was abandoned "in view of applicant's failure to timely file a proper reply to the Office letter" mailed on May 14, 2003. The present application was abandoned as of August 15, 2003. The present petition under 37 CFR 1.137(a), however, was not filed until December 24, 2008.

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 sufficient to show that the delay in the reply that originally resulted in the abandonment was 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 has provided evidence that the applicant was notified of the abandoned status of the application on July 14, 2008. The present petition under 37 CFR 1.137(a), however, was not filed by the applicant until December 24, 2008, more than five 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".

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"). The applicant also states that on September 4, 2008, Brinks Hofer informed the applicant of the results of an investigation of Mr. Prendergast's office and files regarding an unrelated case, and that further investigation into the records of Brinks Hofer "over the following weeks provided the additional evidence of Mr. Prendergast's activities

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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).

that forms the basis for this petition." The evidence and statements presented by the applicant may reasonably show how the five-month delay between July 17, 2008, the date that applicant states that he was first notified of the abandonment, and December 24, 2008, the filing date of the present petition, was unintentional. However, the applicant has not clearly shown how the five-month delay was *unavoidable*. For example, the applicant has not explained what actions the applicant may have taken, including any communications between the applicant and Brinks Hofer, between July 17, 2008, when applicant was notified of the abandonment, and August 21, 2008, when Brinks Hofer informed the applicant that Mr. Prendergast had left the law firm. As another example, the applicant has not provided evidence showing the stage of the investigation on October 14, 2008, three months after the applicant was first notified of the abandonment, and why an additional ten-week delay 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,[3] and (4) any terminal disclaimer (and fee) required by 37 CFR 1.137(d).

The applicant has submitted, with the present petition filed on December 24, 2008, an amendment 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,[4] 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

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).

The applicant has provided, with the present petition, a further showing as to when the applicant first became aware of the abandonment of the application. The applicant has not, however, 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.

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[3] See 35 U.S.C. 133.
[4] March 22, 2007.

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).[5]

The applicant has presented evidence that Mr. Prendergast may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer. The applicant has not, however, provided sufficient evidence that the *entire* delay in discovering the abandoned status of the application, from August 15, 2003, the date of the abandonment of the application, until July 17, 2008, the date that the applicant was informed of the abandonment of the application by Brinks Hofer,[6] occurred despite *applicant's* diligence in prosecuting the application.[7]

The applicant has presented evidence showing that once, on October 5, 2005, more than two years after the due date for the reply to the outstanding Office action, applicant communicated with Brinks Hofer, inquiring specifically about the status of the present application.[8] The applicant has also presented evidence that on April 25, 2008, nearly five years after the due date for the reply to the outstanding Office action, the applicant requested Brinks Hofer to provide a general list of "all data for Herman Miller even if cases are abandoned or expired",[9] and that on April 29, 2008, Brinks Hofer submitted "the reports requested".[10] Assuming that the copy of the spreadsheet provided in Exhibit C is a copy of the report submitted by Brinks Hofer to Debra Miller on April 29, 2008, the spreadsheet shows that the present application was listed as "pending" as of that date.

Evidence has not been presented, however, of any communication between applicant and his former counsel regarding the status of this application, including any response by former counsel to applicant's October 5, 2005 inquiry, until April 25, 2008, more than two and a half years after applicant's initial October 5, 2005 inquiry. Furthermore, the applicant has not presented evidence of any inquiry by the applicant *specifically* into the status of this application, either by contacting his former counsel or by contacting the Office, other than the one inquiry on October 5, 2005, during the entire time period between August 14, 2003, the due date for the reply to the

---

[5] 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").

[6] See item no. 12 on page 4 of the December 24, 2008 petition, as well as Exhibit D.

[7] 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.

[8] See item no. 7 on page 4 of the December 24, 2008 petition, as well as Exhibit B-1.

[9] See Exhibit C, the copy of the April 25, 2008 e-mail from Debra Miller to Mark Rolla and Andrew Stover of Brinks Hofer.

[10] See Exhibit C, the copy of the April 29, 2008 e-mail from Brinks Hofer to Debra Miller

outstanding Office action, and July 17, 2008, when the applicant learned of the abandonment, more than five years after the due date for the reply.[11]

The applicant states that he did not receive a copy of the May 14, 2003 nonfinal Office action.[12] However, the applicant does not state whether the applicant was aware of the Office action, even if the applicant did not receive a copy from his former counsel. The applicant submits, as proof that the applicant believed that the present application was pending, copies of bills submitted by Mr. Prendergast on June 7, 2004, for "drafting claims", and, particularly, on November 23, 2004, for "reviewing correspondence from Patent Office".[13] The applicant does not explain, however, whether the applicant inquired as to why Mr. Prendergast was drafting claims, if not for the purpose of drafting a response to an Office action, or whether the applicant inquired regarding what correspondence from the Office was being reviewed by Mr. Prendergast.

For the reasons given above, the applicant has not submitted sufficient evidence showing:

1. how the five-month delay between July 17, 2008, the date that the applicant states that he was first notified of the abandonment of the application, and December 24, 2008, the filing date of present petition under 37 CFR 1.137(a), was unavoidable,

2. 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

3. how the *entire* delay in filing the required reply from August 14, 2003, the due date for the reply, until the filing of a grantable petition was unavoidable, pursuant to 37 CFR 1.137(a)(3).[14]

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[11] Exhibit B-3 includes a copy of an August 17, 2007 e-mail from applicant to Mr. Andrew Stover of Brinks Hofer, requesting "a list of US and Foreign patents that have gone abandoned or expired during the three-month period from May 1, 2007 through July 31, 2007". This e-mail, however, does not request the status of this application, nor would the status of this application be expected to be included in this list, since the present application became abandoned as of August 15, 2003, which was not within the three-month period requested by applicant in his August 17, 2007 e-mail.

[12] The applicant also states that applicant never received the notice of abandonment. However, 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, 142 USPQ 26, (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).

[13] See Exhibit B-2, the copy of the bill for services on June 7, 2004 by "WF Prendergast", and the copy of the bill for services on November 23, 2004 by "WF Prendergast".

[14] 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 made more than one specific inquiry, with his former counsel, 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 December 24, 2008, 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.[15] The applicant has filed an amendment[16] and a petition fee under 37 CFR 1.17(m), which satisfy items (1) and (2), respectively.[17]

A statement under 37 CFR 1.137(b)(3) has been submitted with the March 16, 2010 supplement to the combined petition, which satisfies item (3).

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 United States Patent and Trademark Office ("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). Furthermore, while the December 24, 2008 combined petition and the March 16, 2010 supplement to the combined petition, are signed by an attorney who is not of record in this application, the signatures appearing on the December 24, 2008 combined petition and on the March 16, 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 December 24, 2008 and on March 16, 2010, is **granted**.

---

[15]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.

[16] The grant of a petition under 37 CFR 1.137 is not a determination that any reply under 37 CFR 1.111 is complete. "Where the proposed reply is to a non-final Office action, the petition may be granted if the reply appears to be *bona fide*. After revival of the application, the patent examiner may, upon more detailed review, determine that the reply is lacking in some respect." See MPEP 711.03(c) II A 2 (a).

[17] The amendment was filed with the present petition on December 24, 2008. The authorization to charge the petition fee to the deposit account of applicant's representative appears on page 2 of the March 16, 2010 supplement to the combined petition, entitled "Supplement to Petition Pursuant to 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application".

The March 16, 2010 Combined Statement under 37 CFR 3.73(b), Power of Attorney, and Change of Correspondence Address

The paper filed on March 16, 2010, entitled "Revocation of Former Powers of Attorney and New Power of Attorney by Assignee of Entire Interest" ("the March 16, 2010 combined statement under 37 CFR 3.73(b), power of attorney, and change of correspondence address"), is **ineffective**. 37 CFR 3.73(b)(2) provides, in pertinent part:

> The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:
>
> (i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
>
> (ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

The statement under 37 CFR 3.73(b) fails to include a statement, pursuant to 37 CFR 3.73(b)(2)(i), that the person signing the statement under 3.73(b) is authorized to act on behalf of the assignee. In addition, the statement under 37 CFR 3.73(b) is signed by a person having the title of Associate General Counsel, who is not a person having apparent authority to sign on behalf of the assignee pursuant to 37 CFR 3.73(b)(2)(ii). See MPEP 324, subsection V (A), which provides, in pertinent part (emphasis in bold added):

> . . . An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors . . . **A person having a title (administrator, general counsel) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee.**

For this reason, the combined statement under 37 CFR 3.73(b), power of attorney, and change of correspondence address, filed on March 16, 2010, is **ineffective**.

For the reasons given above, the patent practitioner who filed this petition, Mr. Charles H. Mottier, of Leydig, Voit, & Mayer, Ltd., is not of record in this application. A courtesy copy of this decision will be mailed to the address of Mr. Mottier. However, in the absence of a properly executed power of attorney and change of correspondence address in this application, all future correspondence will be mailed solely to the address of record.

CONCLUSION

- The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on December 24, 2008, is **dismissed**.

- The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on December 24, 2008 and on March 16, 2010, is **granted**.

- The combined statement under 37 CFR 3.73(b), power of attorney and change of correspondence address, filed on March 16, 2010, is **ineffective**.

- This application is being referred to Technology Center Art Unit 3637 for processing of the amendment filed on December 24, 2008.

- Any inquiry concerning this decision should be directed to Cynthia L. Nessler, Senior Legal Advisor, at (571) 272-7724.

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APR 16 2010

OFFICE OF PETITIONS

In re Application of
Robert L. Beck et al
Application No. 09/835,288
Filed: April 13, 2001
Attorney Docket No. 3591/1102

: **DECISION**
: **ON**
: **PETITION**

This is a decision on the combined petition filed on December 24, 2008, 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 March 16, 2010 entitled "Supplement to Petition Pursuant to 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application" ("the March 16, 2010 supplement to the combined petition"), and the paper, also filed on March 16, 2010, entitled " Revocation of Former Powers of Attorney and New Power of Attorney by Assignee of Entire Interest" (the March 16, 2010 combined statement under 3.73(b), power of attorney, and change of correspondence address").

The combined petition filed on December 24, 2008, the March 16, 2010 supplement to the combined petition, the March 16, 2010 combined statement under 3.73(b), 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. 12-1216 as authorized on page 2 of the December 24, 2008 combined petition, and on pages 1-2 of the March 16, 2010 supplement to the combined petition.

SUMMARY

The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on December 24, 2008, is **dismissed**. The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on December 24, 2008 and on March 16, 2010, is **granted**. The March 16, 2010 combined statement under 3.73(b), power of attorney and change of correspondence address, is **ineffective**.

DECISION

The Petition under 37 CFR 1.137(a) to Revive an Unavoidably Abandoned Application

On May 14, 2003, a nonfinal Office action was mailed by the Office, setting a three-month shortened statutory period for reply. On January 27, 2004, a notice of abandonment was mailed by the Office, stating that the application was abandoned "in view of applicant's failure to timely file a proper reply to the Office letter" mailed on May 14, 2003. The present application was abandoned as of August 15, 2003. The present petition under 37 CFR 1.137(a), however, was not filed until December 24, 2008.

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 sufficient to show that the delay in the reply that originally resulted in the abandonment was 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 has provided evidence that the applicant was notified of the abandoned status of the application on July 14, 2008. The present petition under 37 CFR 1.137(a), however, was not filed by the applicant until December 24, 2008, more than five 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".

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"). The applicant also states that on September 4, 2008, Brinks Hofer informed the applicant of the results of an investigation of Mr. Prendergast's office and files regarding an unrelated case, and that further investigation into the records of Brinks Hofer "over the following weeks provided the additional evidence of Mr. Prendergast's activities

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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).

that forms the basis for this petition." The evidence and statements presented by the applicant may reasonably show how the five-month delay between July 17, 2008, the date that applicant states that he was first notified of the abandonment, and December 24, 2008, the filing date of the present petition, was unintentional. However, the applicant has not clearly shown how the five-month delay was *unavoidable*. For example, the applicant has not explained what actions the applicant may have taken, including any communications between the applicant and Brinks Hofer, between July 17, 2008, when applicant was notified of the abandonment, and August 21, 2008, when Brinks Hofer informed the applicant that Mr. Prendergast had left the law firm. As another example, the applicant has not provided evidence showing the stage of the investigation on October 14, 2008, three months after the applicant was first notified of the abandonment, and why an additional ten-week delay 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,[3] and (4) any terminal disclaimer (and fee) required by 37 CFR 1.137(d).

The applicant has submitted, with the present petition filed on December 24, 2008, an amendment 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,[4] 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

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).

The applicant has provided, with the present petition, a further showing as to when the applicant first became aware of the abandonment of the application. The applicant has not, however, 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.

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[3] See 35 U.S.C. 133.
[4] March 22, 2007.

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).[5]

The applicant has presented evidence that Mr. Prendergast may have intentionally concealed the abandonment of this application from his law firm, Brinks Hofer. The applicant has not, however, provided sufficient evidence that the *entire* delay in discovering the abandoned status of the application, from August 15, 2003, the date of the abandonment of the application, until July 17, 2008, the date that the applicant was informed of the abandonment of the application by Brinks Hofer,[6] occurred despite *applicant's* diligence in prosecuting the application.[7]

The applicant has presented evidence showing that once, on October 5, 2005, more than two years after the due date for the reply to the outstanding Office action, applicant communicated with Brinks Hofer, inquiring specifically about the status of the present application.[8] The applicant has also presented evidence that on April 25, 2008, nearly five years after the due date for the reply to the outstanding Office action, the applicant requested Brinks Hofer to provide a general list of "all data for Herman Miller even if cases are abandoned or expired",[9] and that on April 29, 2008, Brinks Hofer submitted "the reports requested".[10] Assuming that the copy of the spreadsheet provided in Exhibit C is a copy of the report submitted by Brinks Hofer to Debra Miller on April 29, 2008, the spreadsheet shows that the present application was listed as "pending" as of that date.

Evidence has not been presented, however, of any communication between applicant and his former counsel regarding the status of this application, including any response by former counsel to applicant's October 5, 2005 inquiry, until April 25, 2008, more than two and a half years after applicant's initial October 5, 2005 inquiry. Furthermore, the applicant has not presented evidence of any inquiry by the applicant *specifically* into the status of this application, either by contacting his former counsel or by contacting the Office, other than the one inquiry on October 5, 2005, during the entire time period between August 14, 2003, the due date for the reply to the

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[5] 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").

[6] See item no. 12 on page 4 of the December 24, 2008 petition, as well as Exhibit D.

[7] 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.

[8] See item no. 7 on page 4 of the December 24, 2008 petition, as well as Exhibit B-1.

[9] See Exhibit C, the copy of the April 25, 2008 e-mail from Debra Miller to Mark Rolla and Andrew Stover of Brinks Hofer.

[10] See Exhibit C, the copy of the April 29, 2008 e-mail from Brinks Hofer to Debra Miller

outstanding Office action, and July 17, 2008, when the applicant learned of the abandonment, more than five years after the due date for the reply.[11]

The applicant states that he did not receive a copy of the May 14, 2003 nonfinal Office action.[12] However, the applicant does not state whether the applicant was aware of the Office action, even if the applicant did not receive a copy from his former counsel. The applicant submits, as proof that the applicant believed that the present application was pending, copies of bills submitted by Mr. Prendergast on June 7, 2004, for "drafting claims", and, particularly, on November 23, 2004, for "reviewing correspondence from Patent Office".[13] The applicant does not explain, however, whether the applicant inquired as to why Mr. Prendergast was drafting claims, if not for the purpose of drafting a response to an Office action, or whether the applicant inquired regarding what correspondence from the Office was being reviewed by Mr. Prendergast.

For the reasons given above, the applicant has not submitted sufficient evidence showing:

1. how the five-month delay between July 17, 2008, the date that the applicant states that he was first notified of the abandonment of the application, and December 24, 2008, the filing date of present petition under 37 CFR 1.137(a), was unavoidable,

2. 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

3. how the *entire* delay in filing the required reply from August 14, 2003, the due date for the reply, until the filing of a grantable petition was unavoidable, pursuant to 37 CFR 1.137(a)(3).[14]

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[11] Exhibit B-3 includes a copy of an August 17, 2007 e-mail from applicant to Mr. Andrew Stover of Brinks Hofer, requesting "a list of US and Foreign patents that have gone abandoned or expired during the three-month period from May 1, 2007 through July 31, 2007". This e-mail, however, does not request the status of this application, nor would the status of this application be expected to be included in this list, since the present application became abandoned as of August 15, 2003, which was not within the three-month period requested by applicant in his August 17, 2007 e-mail.

[12] The applicant also states that applicant never received the notice of abandonment. However, 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, 142 USPQ 26, (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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[14] 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 made more than one specific inquiry, with his former counsel, 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 December 24, 2008, 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.[15] The applicant has filed an amendment[16] and a petition fee under 37 CFR 1.17(m), which satisfy items (1) and (2), respectively.[17]

A statement under 37 CFR 1.137(b)(3) has been submitted with the March 16, 2010 supplement to the combined petition, which satisfies item (3).

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 United States Patent and Trademark Office ("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). Furthermore, while the December 24, 2008 combined petition and the March 16, 2010 supplement to the combined petition, are signed by an attorney who is not of record in this application, the signatures appearing on the December 24, 2008 combined petition and on the March 16, 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 December 24, 2008 and on March 16, 2010, is **granted**.

---

[15]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.

[16] The grant of a petition under 37 CFR 1.137 is not a determination that any reply under 37 CFR 1.111 is complete. "Where the proposed reply is to a non-final Office action, the petition may be granted if the reply appears to be *bona fide*. After revival of the application, the patent examiner may, upon more detailed review, determine that the reply is lacking in some respect." See MPEP 711.03(c) II A 2 (a).

[17] The amendment was filed with the present petition on December 24, 2008. The authorization to charge the petition fee to the deposit account of applicant's representative appears on page 2 of the March 16, 2010 supplement to the combined petition, entitled "Supplement to Petition Pursuant to 37 CFR 1.137(b) to Revive an Unintentionally Abandoned Application".

The March 16, 2010 Combined Statement under 37 CFR 3.73(b), Power of Attorney, and Change of Correspondence Address

The paper filed on March 16, 2010, entitled "Revocation of Former Powers of Attorney and New Power of Attorney by Assignee of Entire Interest" ("the March 16, 2010 combined statement under 37 CFR 3.73(b), power of attorney, and change of correspondence address"), is **ineffective**. 37 CFR 3.73(b)(2) provides, in pertinent part:

> The submission establishing ownership must show that the person signing the submission is a person authorized to act on behalf of the assignee by:
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> (i) Including a statement that the person signing the submission is authorized to act on behalf of the assignee; or
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> (ii) Being signed by a person having apparent authority to sign on behalf of the assignee, e.g., an officer of the assignee.

The statement under 37 CFR 3.73(b) fails to include a statement, pursuant to 37 CFR 3.73(b)(2)(i), that the person signing the statement under 3.73(b) is authorized to act on behalf of the assignee. In addition, the statement under 37 CFR 3.73(b) is signed by a person having the title of Associate General Counsel, who is not a person having apparent authority to sign on behalf of the assignee pursuant to 37 CFR 3.73(b)(2)(ii). See MPEP 324, subsection V (A), which provides, in pertinent part (emphasis in bold added):

> . . . An officer (chief executive officer, president, vice-president, secretary, or treasurer) is presumed to have authority to sign on behalf of the organization. The signature of the chairman of the board of directors is acceptable, but not the signature of an individual director. Modifications of these basic titles are acceptable, such as vice-president for sales, executive vice-president, assistant treasurer, vice-chairman of the board of directors . . . **A person having a title (administrator, general counsel) that does not clearly set forth that person as an officer of the assignee is not presumed to have authority to sign the submission on behalf of the assignee.**

For this reason, the combined statement under 37 CFR 3.73(b), power of attorney, and change of correspondence address, filed on March 16, 2010, is **ineffective**.

For the reasons given above, the patent practitioner who filed this petition, Mr. Charles H. Mottier, of Leydig, Voit, & Mayer, Ltd., is not of record in this application. A courtesy copy of this decision will be mailed to the address of Mr. Mottier. However, in the absence of a properly executed power of attorney and change of correspondence address in this application, all future correspondence will be mailed solely to the address of record.

CONCLUSION

- The petition under 37 CFR 1.137(a) to revive an unavoidably abandoned application, filed on December 24, 2008, is **dismissed**.

- The alternative petition under 37 CFR 1.137(b) to revive an unintentionally abandoned application, filed on December 24, 2008 and on March 16, 2010, is **granted**.

- The combined statement under 37 CFR 3.73(b), power of attorney and change of correspondence address, filed on March 16, 2010, is **ineffective**.

- This application is being referred to Technology Center Art Unit 3637 for processing of the amendment filed on December 24, 2008.

- Any inquiry concerning this decision should be directed to Cynthia L. Nessler, Senior Legal Advisor, at (571) 272-7724.

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OFFICE OF PETITIONS

In re Application of	:
Jeffrey A. Bluestone et al	:
Application No. 09/835,297	: DECISION GRANTING
Filed: April 12, 2001	:STATUS UNDER 37 CFR 1.47(a)
Attorney Docket No: GNN-014CP	:
	:

This is in response to the petition under 37 CFR 1.47(a), filed February 13, 2002.

The petition is granted.

Petitioner has shown that the nonsigning inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the nonsigning inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

This application is being forwarded to the Office of Initial Patent Examination for pre-examination processing.

Frances Hicks

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

Dr. Jeffrey A. Bluestone
UCSF Diabetes Center
University of California, San Francisco
513 Parnassus Avenue, Box 0540-HSW, Room 1114
San Francisco, CA 94143-0540

COPY MAILED

MAY 1 0 2002

OFFICE OF PETITIONS

In re Application of
Jeffrey A. Bluestone; Mary Collins; Matthew J. Whitters; Matthew D. Griffin; and David M. Kranz
Application No. 09/835,297
Filed: April 12, 2001
For: SURFACE-BOUND ANTIGEN BINDING PORTIONS OF ANTIBODIES THAT BIND TO CTLA-4 AND CD28 AND USES THEREFOR

Dear Mr. Bluestone:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 in 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-8680. 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 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

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

cc:

Amy E. Mandragouras
Lahive & Cockfield LLP
28 State Street
Boston MA 02109

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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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
P.O. BOX 1995
VIENNA, VA 22183

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JAN 14 2009

OFFICE OF PETITIONS

In re Application of :
David A. Jablow :
Application No. 09/835,376 : ON PETITION
Filed: April 17, 2001 :
Attorney Docket No. 129250-000902/US :

This is a decision on the petition under 37 CFR 1.137(b), filed November 26, 2008, to revive the above-identified application.

The application became abandoned for failure to file a timely reply to the Notification of Non-Compliant Appeal Brief (37 CFR 41.37) mailed on October 4, 2007.

As authorized, the appeal brief fee in the amount of $540 has been charged to petitioner's deposit account.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an appeal brief with the $540 fee; (2) the petition fee of $1,620; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to Technology Center Art Unit 2455 for further processing in accordance with this decision.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

Ex. C. Larose

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/4/07

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/835,392 Patent No.: 7103237

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: _____

BHAVESH M MEHTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
SPE

2624
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 30 2004

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ALEXANDRIA, VA 22313-1450
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JUN 30 2004

OFFICE OF THE DIRECTOR
TC 3600

Arent Fox Kintner Plotkin & Kahn, PLLC
Suite 600
1050 Connecticut Avenue, N.W.,
Washington, DC 20036-5339

In re Application of
Haruo Tokunaga
Application No. 09/835,413
Filed: April 17, 2001
For: CHUCK AND SUCTION BOARD FOR PLATES

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to the request for reconsideration taken as a renewed petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office on May 4, 2004.

The petition is **GRANTED**.

A review of the file record reveals that a Notice of Allowance and Fee(s) Due was mailed on July 2, 2002. The application was held abandoned for failure to timely respond to the Notice mailed July 2, 2002 and a Notice to that effect was mailed on November 15, 2002.

The original petition to withdraw the holding of abandonment filed November 27, 2002 was dismissed because of an apparent address change from Suite 600, 1050 Connecticut Avenue to Suite 400, 1050 Connecticut Avenue. In the renewed petition applicant states that any mail delivered to either the 4th floor or 6th floor at 1050 Connecticut Avenue would be sent to the firm's mail room on the 4th floor.

In view of applicant's comments and evidence submitted with the original petition to withdraw the holding of abandonment filed November 27, 2002, the petition to withdraw the abandonment is granted.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the holding of abandonment and restore the application to pending status before re-dating and re-mailing the Notice of Allowance and Fee(s) Due originally mailed on April 25, 2003 to the correct correspondence address noted above.

Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-2121

RAR/vdb: 6/16/04

UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 27 2004

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ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
Suite 600
1050 Connecticut Avenue, N.W.,
Washington DC 20036-5339

MAILED

FEB 27 2004

OFFICE OF THE DIRECTOR
TC 3600

In re Application of
Haruo Tokunaga
Application No. 09/835,413
Filed: April 17, 2001
For: CHUCK AND SUCTION BOARD FOR PLATES

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on applicant's supplemental petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on ~~August 20, 2003~~ November 27, 2002. The delay in deciding this petition is sincerely regretted.

The petition is **DISMISSED.**

A review of the file records reveals that a Notice of Allowability and a Notice of Allowance and Fee(s) Due (hereinafter "Notices") were mailed to applicant on July 2, 2002. Since the issue fee has not been received, the application was held abandoned, and a Notice to that effect was mailed on November 15, 2002.

Applicant submits a statement that the above Notices were never received. Applicant also submits a statement attesting to the fact that a search of the file jacket and docket records was performed and indicates that the Notices were not received. Applicant has provided copies of docket records presumably to take advantage of the procedure outlined in 1156 O.G. 53 and MPEP 711.03(c) for withdrawing an abandonment in an application having a non-received Office correspondence.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of October 2, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Practitioner submits a statement that the above-noted Notices were not received. Practitioner also attests to the fact that a search of the file jacket and docket records indicates that the Notices were not received. Applicant has submitted a copy of the docket record where the non-received Notices would have been entered as being due on and around the date of October 2, 2002. However it appears that, at some point, applicant's correspondence addressed changed. The address on record with the Office is the Suite **600** 1050 Connecticut Avenue address. This was (and still is) the correspondence address of record. It is noted the address at the bottom of the petition to withdraw the holding of abandonment is Suite **400** 1050 Connecticut Avenue. Since 1156 OG 53 is predicated upon the fact that applicant is able to receive the correspondence at the correspondence address of record, applicant's statements above and the showing of non-receipt of the Notices need to be reflective of the original correspondence address, the Suite **600** 1050 Connecticut Avenue address, which was the correspondence address of record on July 2, 2002, the date the Notice of Allowability and the Notice of Allowance were mailed.

Because there was never any updated change in correspondence address filed with the Office, the Notice of Allowance sent to the applicant from the Office was properly sent to the address of record; to the Suite **600** 1050 Connecticut Avenue address in Washington D.C.

The MPEP 601.03 states,

> "Where an attorney or agent of record (or applicant, if he or she is prosecuting the application *pro se*) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP code)..."
>
> "The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made."

There is nothing provided in the petition that indicates that the Office was alerted to an address change. Therefore, there is no apparent Patent and Trademark Office error in the mailing of the Office communication and, based upon the available evidence, the holding of abandonment will not be withdrawn. For this decision only, the decision will be mailed to the correspondence address of record as well as the address from which

the petition originated but the correspondence address on record with the Office remains unchanged.

While MPEP 711.03(c) does give an applicant the ability to petition to show that a communication from the Patent Office was not received, this is predicated on the fact that applicant was at the correspondence address to receive the communication. MPEP 711.03(c) also requires an applicant to show that "due care was taken to adhere to the requirement for prompt notification in each concerned application for the change of address". Since the Office correspondence of July 2, 2002, was correctly mailed to the address of record, the procedure outlined in 1156 OG 53 is not available to the applicant and the alleged showing of non-receipt of the Notice of Allowance is not persuasive to withdraw the holding of abandonment in this application, absent a showing that the applicant was residing at the address of record at the time the Office correspondence of July 2, 2002 would have been received.

If it can not be shown applicants representatives were at the correspondence address of record at the time the Notice of Allowability and a Notice of Allowance and Issue Fee Due would have been received then applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

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), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

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; **(2)** the petition fee required by 37

CFR 1.17(m); and (**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 petition fee required by law for filing a petition under unavoidable standard is $110. The fee for a petition under the unintentional standard is $1,300. If applicant has, or can qualify as a "small entity" and does so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail:	Deputy Commissioner of Patent Examination Policy Box DAC Washington, D.C. 20231
By FAX:	(703) 308-6916 Attn: Office of Petitions
By Hand:	Crystal Plaza 4, Suite 3C23 2201 South Clark Place Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

Telephone inquiries relative to this decision should be directed to Special Programs Examiner Ken Dorner at (703) 308-0866.

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 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Kenneth J. Dorner, Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866

KJD/cps: 2/4/04

cc:

ARENT FOX KINTNER PLOTKIN & KAHN, PLLC
Suite 400
1050 Connecticut Avenue, N.W.,
Washington DC 20036-5339

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

In re Application of :
Majid Anwar :
Application No. 09/835,458 :
Filed: April 16, 2001 :
For: USER INTERFACE SYSTEMS AND METHODS FOR VIEWING AND MANIPULATING DIGITAL DOCUMENTS :

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed July 12, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petition does not fulfill the requirement in item (3), (5) and (6) above.

For the above stated reasons, the petition is **DENIED**.

Should applicant desire reconsideration, he/she should supplement this petition by a declaration or statement under oath giving the information as outlined above. No further petition fee is required.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision.

Kenneth A. Wieder
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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ROPES & GRAY LLP
PATENT DOCKETING 39/41
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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JUL 3 1 2008

OFFICE OF PETITIONS

In re Application of	:	
ANWAR, Majid	:	
Application No. 09/835,458	:	DECISION GRANTING PETITION
Filed: April 16, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. **PGLD-P01-003**	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed July 25, 2008, 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 7, 2008 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-7253.

This application is being referred to Technology Center AU 2629 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

Monica A. Graves
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

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AUG 13 2009

OFFICE OF PETITIONS

In re Application of	:	
Majid ANWAR	:	
Application No. 09/835,458	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: April 16, 2001	:	
Attorney Docket No. **PGLD-P01-003**	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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BOSTON MA 02110-2624

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AUG 10 2009

OFFICE OF PETITIONS

In re Application of	:	
Majid ANWAR	:	
Application No. 09/835,483	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: April 16, 2001	:	
Attorney Docket No. **PGLD-P01-008**	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to Tredelle Jackson at (571) 272-2783.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

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BOSTON MA 02110-2624

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SEP 14 2009

OFFICE OF PETITIONS

In re Patent No. 7,036,076	:	
Issue Date: April 25, 2006	:	
Application No. 09/835,484	:	ON PETITION
Filed: April 16, 2001	:	
Attorney Docket No. PGLD-P01-007	:	

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 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.

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20071120

DATE : November 20, 2007

TO SPE OF : ART UNIT 2833

SUBJECT : Request for Certificate of Correction on Patent No.: 6,568,947 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:

SPE: Paula A. Bradley **Art Unit** 2833

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 13 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

In re Application of
Paul A. Kline
Application No. 09/835,532
Filed: April 16, 2001
For: **POWER LINE COMMUNICATION SYSTEM AND METHOD OF USING THE SAME**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as Attorney(s) of record and change of address filed on April 08, 2005.

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/agents associated with Customer Number 23377 in the request to withdraw are withdrawn.

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 of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

Cc:

WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
ONE LIBERTY PLACE-46TH FLOOR
PHILADELPHIA PA 19103

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. 14

Kubovicik & Kubovicik
The Farragut Building
900 17th Street, NW
Suite 710
Washington, DC 20006

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APR 0 8 2003

OFFICE OF PETITIONS

In re Application of :
Carl R. Merril et al. :
Application No. 09/835,537 : ON PETITION
Filed: April 16, 2001 :
Attorney Docket No. PNC-004 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 20, 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 January 14, 2002, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on April 15, 2002.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34, the signature of Peter F. Corless appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If Peter F. Corless desires to receive future correspondence regarding this application, an appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence will be directed solely to the address of record until otherwise instructed.

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

The application file is being forwarded to Technology Center AU 1616 for further processing.

Latrice Bond

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

cc: Edwards & Angell
PO Box 9169
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M. ELISA LANE
PANACEA PHARMACEUTICALS INC.
207 PERRY PARKWAY
GAITHERSBURG, MD 20877

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AUG 0 9 2005

OFFICE OF PETITIONS

In re Application of	:	
Merril et al.	:	
Application No. 09/835,537	:	ON PETITION
Filed: April 16, 2001	:	
Attorney Docket No. PNC-004	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 6, 2005, 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 October 21, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on January 22, 2005. A Notice of Abandonment was mailed July 7, 2005.

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 1600 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

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PANACEA PHARMACEUTICALS, INC.
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SUITE 2
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NOV 27 2007

OFFICE OF PETITIONS

In re Application of	:	
Merril et al.	:	
Application No. 09/835,537	:	DECISION ON PETITION
Filed: April 16, 2001	:	
Attorney Docket No. PNC-004	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 31, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and an Amendment, (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center 1600 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

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WASHINGTON, DC 20005-3500

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DEC 2 9 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Jun Koyama, et al. :
Application No. 09/835,551 :
Filed: April 17, 2001 :
Attorney Docket No. 12732-026001 :

This is a decision on the petition, filed December 28, 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 July 21, 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 (571) 272-3204.

The application is being referred to Technology Center AU 2821 for further processing of the request for continued examination under 37 CFR 1.114 filed December 28, 2004.

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).

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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L STREET NW
WASHINGTON, DC 20037

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MAR 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Kie Y. Ahn et al	:	
Application No. 09/835,643	:	DECISION GRANTING PETITION
Filed: April 17, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. M4065.0383/P383	:	

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 April 28, 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 (571) 272-3218.

This matter is being referred to Technology Center AU 2826 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

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

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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).*

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EDWARD A. GORDON
ROPES & GRAY, L.L.P.
ONE INTERNATIONAL PLACE
BOSTON, MA 02110-2624

MAILED

AUG 2 4 2004

Technology Center 2100

In re Application of: Anwar
Application No. 09/835,679
Filed: April 16, 2001
For: SYSTEMS AND METHODS FOR DIGITAL DOCUMENT PROCESSING

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed July 7, 2004, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **DISMISSED**.

M.P.E.P. § 708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

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(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petition filed July 7, 2004 fails to adequately meet requirements (b), (d) and (e) of the criteria set forth above. With respect to requirement (b), the petition lacks the required statement. With respect to requirement (d), the petition fails to identify which reference(s) is/are considered to be the most closely related to the (claimed) subject matter. Finally and with respect to requirement (e), a detailed discussion of the (aforementioned most closely related) references has not been provided, therefore the petition lacks a detailed discussion with the specificity required under 37 CFR 1.111 (b) and (c). Note, a general allegation that the claims define a patentable invention without specifically pointing out how ***the language of the claims*** patentably distinguishes them from the references does not comply with the requirements of this section. The petition must specifically point out how ***the claimed subjected matter*** is patentable over the cited references.

In addition, and with respect to requirement (e) above, petitioner should ensure that the above discussion is directed to how the language of ***each of*** the independent claims is specifically distinguishable and patentable from the references provided in requirement (d) above.

Petition to Make Special **DISMISSED**.

Petitioner is given one opportunity to perfect the petition. Any request for reconsideration must be filed within TWO MONTHS of the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted by a declaration or statement providing the information as outlined above.

Until the renewed petition is submitted, the application will be returned to the examiner's docket to await treatment on the merits in the normal order of examination.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
703-308-0885

BLJ: 8/20/04

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OFFICE OF PETITIONS

In re Patent No. 6,925,597	:	
Issue Date: August 2, 2005	:	
Application No. 09/835,679	:	ON PETITION
Filed: April 16, 2001	:	
Attorney Docket No. PGLD-P01-004	:	

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 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.

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

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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PATENT DEPARTMENT
P.O. BOX 2000 – RY60-30
RAHWAY, NJ 07065-0907

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OFFICE OF PETITIONS

In re Application of
John J. Donnelly, et al.
Application No. 09/835,694
Filed: April 16, 2001
Attorney Docket No. 18972PCA

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status

of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., (August 2001), Section 201.11, Reference to First Application. In this regard, Application No. 08/089,985 filed July 8, 1993 cannot be a continuation of Application No. 08/461,268 since the application (08/461,268) was filed March 18, 1995. Additionally, it is not clear why Application No. 08/450,462 is mentioned.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment[1] addressing the above matter is required.

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

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

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

Any questions concerning this matter may be directed to Retta Williams at (571) 272-3229.

Karen Creasy

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

[1] *Note* 37 CFR 1.121

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J. MARK HAND
Merck & Co., Inc.
Patent Department
P.O. Box 2000 - RY60-30
Rahway NJ 07065-0907

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OFFICE OF PETITIONS

In re Application of
JOHN J. DONNELLY, et al.
Application No. 09/835,694
Filed: April 16, 2001
Attorney Docket No. 18972PCA

DECISION ON PETITIONS
UNDER 37 CFR 1.78(a)(3)

This is a decision on the **renewed** petition under 37 CFR 1.78(a)(3), filed December 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed nonprovisional and PCT applications, as set forth in the concurrently filed amendment.

The petitions are **GRANTED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed applications under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 § U.S.C. 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected Filing Receipt

accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

Applicant is reminded that where an application claims a benefit under 35 U.S.C 120 of a chain of applications, the application must make reference to the first (earliest) application and every intermediate application. *See* Sampson v. Ampex Corp., 463 F.2d 1042, 1044-45, 174 USPQ 417, 418-19 (2d Cir. 1972); Sticker Indus. Supply Corp. v. Blaw-Knox Co., 405 F.2d 90, 93, 160 USPQ 177, 179 (7th Cir. 1968); Hovlid v. Asari, 305 F.2d 747, 751, 134 USPQ 162, 165 (9th Cir. 1962). See also MPEP § 201.11. **In addition, every intermediate application must also make reference to the first (earliest) application and every application after the first application and before such intermediate application. Petitioner should review the priority claims submitted to ensure that a reference is made to the first application and to every intermediate application. Appropriate references must be made in each intermediate application in the chain of prior applications. If an applicant desires, for example, the following benefit claim: "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which claims the benefit of provisional Application No. A, filed ---," then Application No. C must have a reference to Application No. B and provisional Application No. A, and Application No. B must have a reference to provisional Application No. A. See MPEP 201.11(C).** Inspections of the intermediate applications reveal defects in the chain of priority claims. Applicant should review each intermediate application in the chain to ensure compliance with MPEP 201.11(C).

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

The submitted renewed petition fee is unnecessary. Therefore, amount of $130 has been credited back to petitioner's deposit account.

Any inquiries concerning this decision may be directed to Amelia Au at (571) 272-7414. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being to referred Technology Center Art Unit 1636 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed applications, and for entry of the concurrently filed Request for Continued Examination (RCE) under 37 CFR §1.114 dated December 22, 2005.

Frances Hicks
Lead Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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United States Patent and Trademark Office
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
09/835,694	04/16/2001	1636	1440	18972PCA	46	25	11

CONFIRMATION NO. 5738

CORRECTED FILING RECEIPT

OC000000019937570

Merck & Co., Inc.
Patent Department
P.O. Box 2000 - RY60-30
Rahway, NJ 07065-0907

Date Mailed: 08/08/2006

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)

John J. Donnelly, Havertown, PA;
Varavani J. Dwarki, Alameda, CA;
Margaret A. Liu, Rosemont, PA;
Donna L. Montgomery, Chalfont, CA;
Suezanne E. Parker, San Diego, CA;
John W. Shiver, Doylestown, PA;
Jeffrey B. Ulmer, Chalfont, PA;

Assignment For Published Patent Application

Merck & Co., Inc., Rahway, NJ

Power of Attorney:

J Hand--36545

Domestic Priority data as claimed by applicant

This application is a CON of 08/461,268 06/05/1995 ABN
which is a CIP of PCT/US94/02751 03/14/1994
which is a CIP of 08/089,985 07/08/1993 ABN
which is a CON of 08/032,383 03/18/1993 ABN

Foreign Applications

If Required, Foreign Filing License Granted: 07/02/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is
US09/835,694

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Nucleic acid pharmaceuticals-influenza matrix

Preliminary Class

514

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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Paper No. 11

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LOS ANGELES CA 90025

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OFFICE OF PETITIONS

In re Application of
McClary et al.
Application No. 09/835,704
Filed: April 16, 2001
Attorney Docket No. 4906.P074

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed September 25, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of an application filed in an eighteen month publication country on April 12, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the

USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of March 4, 2004, accompanies this decision on petition.

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

This application is being forwarded to Technology Center Art Unit 2143 for examination in due course.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES CA 90025-1030

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OFFICE OF PETITIONS

ON PETITION

In re Application of
McClary, et al.
Application No. ~~09/830,704~~ 09/835,704
Filed: April 16, 2001
Attorney Docket No. 4906.P074

This is a decision on the petition to revive under 37 CFR 1.137(b), filed April 11, 2006.

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

The above-identified application became abandoned for failure to timely file a reply in response to the non-final Office action mailed September 9, 2005. This Office action set a shortened statutory period for reply of three (3) months. No extensions of time under 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on December 10, 2005. A Notice of Abandonment was mailed on April 3, 2006.

With the instant petition, applicant paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of an amendment.

The application file is being forwarded to Group Art Unit 2616 for consideration of the amendment filed April 11, 2006.

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

Cliff Congo

Cliff Congo
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. 8

MAY 30 2002

Charles Berman
OPPENHEIMER, WOLF & DONNELLY, LLP
2029 Century Park East, 38th floor
Los Angeles, CA 90067-3024

In re Application of:	:	
Kia Silverbrook	:	
Application No. 09/835,711	:	DECISION ON REQUEST TO
Filed: April 16, 2001	:	WITHDRAW FROM RECORD
Attorney Docket No. 360040-21	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed April 2, 2002.

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 the 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 which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by Charles Berman on behalf of all attorneys of record and there is no outstanding Office action requiring a response by the applicant. Accordingly, the request is **approved**.

There is no attorney of record at this time.

In accordance with M.P.E.P. § 403, all future communications from the Office will be directed to the first named inventor, Kia Silverbrook, at the below-listed address until otherwise notified by applicant.

Inquiries related to this decision should be directed to Ed Glick at (703) 308-4858.

Edward J. Glick, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Kia Silverbrook
393 Darling Street
Balmain, NSW 2041
Australia (Air Mail)

UNITED STATES 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. None

HUNTON & WILLIAMS LLP
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, N.W.
SUITE 1200
WASHINGTON DC 20006-1109

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APR 21 2005

OFFICE OF PETITIONS

In re Application of James F. Smith et al. Application No. 09/835,790 Filed: April 16, 2001 Attorney Docket Number: 1044-AW Title: ONE-WAY PNEUMATIC DELIVERY SYSTEM	DECISION ON PETITIONS UNDER 37 C.F.R. §§ 1.181 and 1.137(a)

This is a decision on the petitions under 37 C.F.R. §§1.181 and 1.137(a)[1], filed August 13, 2004, to withdraw the holding of abandonment and to revive the above-identified application, respectively.

On June 4, 2003, a Notice of Allowability and Issue Fee due was mailed. The issue and publication fees were received on June 16, 2003. On July 1, 2003, a Notice was mailed which indicated that a Change of Power of Attorney had been received on May 5, 2003[2]. This notice was mailed to both the address of record and the Petitioner at the former address of record.

The above-identified application became abandoned for failure to reply in a timely manner to the "Notice of Drawing Inconsistency with Specification," mailed July 17, 2003 to the address of record, which set a one-month period for response. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-

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 It is noted that a copy of this Change of Power of Attorney has not been located in the electronic file. It is further noted that it does not appear that Petitioner took any further action after receiving the communication of July 1, 2003 until performing the online status inquiry around the time this petition was prepared.

identified application became abandoned on August 18, 2003. A Notice of Abandonment was mailed October 2, 2003.

A copy of the notice mailed on July 17, 2003 has been included with this decision.

With the instant petition, Petitioner has submitted a statement that he has not received the communication of July 17, 2003.

The petition under 37 C.F.R. §1.181:

Petitioner's attestation that he failed to receive this communication fails to establish non-receipt of the same, in that it has not been accompanied by an attestation to the fact that a search of the file jacket and docket records indicates that the Office communication was not received, and that he has searched the place where he normally would keep such communications and could not find it[3]. Furthermore, petitioner has failed to supply a copy of the docket report where the non-received Office communication would have been entered had it been received and docketed. 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.

As such, the petition under 37 C.F.R. §1.181 to withdraw the holding of abandonment is **DISMISSED**.

The petition under 37 C.F.R. §1.137(a):

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that petitioner has met his burden of establishing that the delay was "unavoidable."

Accordingly, the petition under 37 C.F.R. §1.137(a) is **GRANTED**.

After this decision is mailed, the application will be forwarded to Technology Center 3600 for re-mailing of the notice of July 17, 2003.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this 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 change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

---

3 See MPEP 711.03(c).

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

cc: SEBOLT,JOSEPH
Sand and Sebolt
4940 Munson St NW Ste 110
Aegis Tower
Canton, OH 4471

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 12/18/08

TO SPE OF : ART UNIT 2162

SUBJECT : Request for Certificate of Correction for Appl. No.: 09835791 Patent No.: 7363290 B1

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

You can fax the Director's/SPE response to 571-273-0990

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

Thank You For Your Assistance

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

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

Comments: Approved

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

/John E Breene/ SPE AU 2162

SPE Art Unit

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 20, 2007

TO SPE OF : ART UNIT 3711

SUBJECT : Request for Certificate of Correction for Appl. No. 09/835830 patent No.: 7021937

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

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

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

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

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

Comments: _____

Gene Kim

Digitally signed by Gene Kim
DN: cn=Gene Kim, c=US, o=PTO, ou=AU 3711, email=eugene.kim@uspto.gov
Date: 2009.02.24 08:33:27 -05'00'

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 7

THOMAS A. O'ROURKE
WYATT, GERBER & O'ROURKE
99 PARK AVENUE
NEW YORK, NY 10016

COPY MAILED
MAY 2 1 2004
OFFICE OF PETITIONS

In re Application of	:	
Lutzker, Robert	:	
Application No. 09/835,861	:	ON PETITION
Filed: April 16, 2001	:	
Title: Apparatus And Method For Improving The Taste of Wines	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 12, 2004, 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 to File Missing Parts of Application (Notice) mailed March 19, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 20, 2002. A Notice of Abandonment was mailed on October 24, 2003.

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 the Office of Initial Patent Examination for further processing.

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

Liana Chase

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

United States Patent and Trademark Office

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Thomas A. O'Rourke
BODNER & ROURKE, L.L.P.
425 Broadhollow Road
Melville, New York 11747

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OFFICE OF PETITIONS

In re Application of	:	
Robert LUTZKER	:	DECISION ON
Application No. 09/835,861	:	PETITION
Filed 06 April 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: NONE	:	

This is a decision on the petition under 37 CFR 1.137(b), filed 20 July 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 21 December 2004, 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 22 March 2005.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Response under 37 CFR 1.111, and (2) the petition fee for a small entity have been received. The statement of unintentional delay presented in the petition does not comply with the current rule. Effective 01 December 1997, 37 CFR 1.137(b)(3) requires a statement that"the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented has been accepted and interpreted as meaning that the "entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3) at the time of filing this petition. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect. Accordingly, the reply to the Office action of 21 December 2004 is accepted as

having been unintentionally delayed.

The matter is being referred to Technology Center Art Unit 1764.

Telephone inquiries concerning this decision should be directed to Nguyen Ngoc-Ho at (571) 272-3290.

Wan Laymon
Petitions Examiner
Office of Petitions

NNH/WL:hn

page 35 of the specification was not filed on April 16, 2001, since that page is not present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declaration relied on contains the declarants' recall of routine events which occurred 4 months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Because page 35 of the specification was not present on April 16, 2001, the date the application was filed, page 35 cannot be considered a part of the original disclosure of the application. Accordingly, the application cannot be accorded the filing date of April 16, 2001, with page 35 as a part of the original disclosure.

Accordingly, the petition is **DISMISSED**.

Page 35, submitted with the instant petition on August 13, 2001, will not be entered or used during the prosecution of this application. However, applicant may resubmit the matter included in page 35 as an amendment for consideration by the examiner under Sections 608.02(p) and 608.04 of the Manual of Patent Examining Procedure.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

The application file will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of April 16, 2001, using the pages of the specification filed on that date.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

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. 4

STUART T LANGLEY ESQ
HOGAN & HARTSON LLP
1200 17TH ST
SUITE 1500
DENVER CO 80202

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NOV 1 5 2001

OFFICE OF PETITIONS

In re Application of
Vange, et al.
Application No. 09/835,874
Filed: April 16, 2001
Title: CONDUCTOR GATEWAY BUFFER PRIORITIZATION

DECISION ON PETITION

This is a decision on the petition filed August 13, 2001, to accord the above-identified application a filing date of April 16, 2001, with page 35 of the specification as a part of the original disclosure.

Application papers in the above-identified application were filed on April 16, 2001. However, on June 11, 2001, the Initial Patent Examination Division mailed applicant a "Notice to File Missing Parts of Nonprovisonal Application - Filing Date Granted." Applicant was notified that the application papers had been accorded a filing date; however, the filing fee was missing and the oath or declaration was unsigned. In addition, the Notice informed applicant that page 35 of the specification appeared to have been omitted from the application.

In response, on August 13, 2001[1], applicant filed the present petition to accord a filing date of April 16, 2001, with page 35 of the specification as part of the original disclosure. Applicant asserted that page 35 was with the application as originally filed on April 16, 2001. As proof thereof, applicant submitted a copy of a date-stamped postcard receipt, indicating that the following items were received by the PTO on April 16, 2001: (1) Utility Patent Application; (2) 9 Sheets of Drawings; (3) Utility Patent Transmittal; (4) Unexecuted Declaration; (5) Certificate of Mailing by Express Mail; and (6) Return Postcard.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of the items. See MPEP 503. Here, the postcard receipt does not identify the number of pages of the Utility Patent Application. The postcard receipt does acknowledge receipt of the Utility Patent Transmittal. Examination of the Utility Patent Transmittal denotes 61 pages of specification. However, a postcard receipt which references a transmittal letter only serves as evidence of receipt in the Office of the transmittal letter, and not of items which are listed on the transmittal letter.

The PTO file is the official record of papers originally filed in this application. A review of the official file reveals that

[1] Because August 11, 2001 was a Saturday, the petition filed via Express Mail on August 13th was timely.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

ARTHUR H. SARKISSIAN
3 HANOVER SQUARE
APT. #14G
NEW YORK, NY 10004

RECEIVED
MAR 1 1 2002
DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Sarkissian
Application No.: 09/835,884
Filed: 16 April, 2001
For: KEY SURROUND MODULE INPUTTING DEVICE

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(d), filed on 31 January, 2002, to make the above-identified application special.

The petition requests that the above-identified application be made special, *inter alia*, under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

A grantable petition under 37 C.F.R. § 1.102(d), M.P.E.P. § 708.02, item II: Infringement, must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;

(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and

(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge or the pertinent prior art.

Further, Applicant must provide one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record.

The petition is **GRANTED**.

The application will retain its special status throughout its entire course of prosecution the Patent and Trademark Office, including appeal, if any to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application file will be forwarded to the examiner for expedited prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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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HEDMAN & COSTIGAN, P.C.
1185 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

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SEP 28 2005

OFFICE OF PETITIONS

In re Application of	:	
Arthur Sarkissian	:	
Application No. 09/835,884	:	ON PETITION
Filed: April 16, 2001	:	
Attorney Docket No. N/A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2005, to revive the above-identified application.

In response to the final Office action mailed January 2, 2003, petitioner hereby submits $750 for the petition to revive fee, $395 for the filing of a Request for Continued Examination (RCE), an Oath/Declaration with power of attorney and the statement of unintentional delay.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement 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.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

The Oath/Declaration, filed May 23, 2005, which contains a new power of attorney has been made of record.

The application file is being referred to Technology Center Art Unit 2673, for processing the Request for Continued Examination under 37 CFR 1.114, and for further review of the previously filed amendment.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
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
DIW 07-02

Paper No. 10

AGILENT TECHNOLOGIES
LEGAL DEPARTMENT, DL429
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 58043
SANTA CLARA CA 95052-8043

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JUL 2 3 2002

OFFICE OF PETITIONS

In re Application of	:	
Sampson et al.	:	
Application No. 09/836,012	:	ON PETITION
Filed: 17 April, 2001	:	
Attorney Docket No. 10992153-1	:	

This is a decision on the petition filed on 15 February, 2002 (certificate of mailing date 21 December, 2001), in response to the Notice of Incomplete Reply, requesting that the rules of practice be waived such that the Sequence Listing filed with the present petition on 15 February, 2002, be considered as timely filed. The petition is properly treated as a petition under 37 CFR 1.183 to excuse the delay in submission of the aforementioned document.

The petition is dismissed.

BACKGROUND

On 17 April, 2001, the above-identified application was filed. On 6 July, 2001, Initial Patent Examination Division (IPED) mailed a Notice to File Missing Parts of Nonprovisional Application requiring (a) an executed oath or declaration, (b) a surcharge for its late filing, and (c) compliance with the requirements of 37 CFR 1.821-1.825 regarding a Sequence Listing.

In response, on 24 September, 2001 (certificate of mailing date 17 September, 2001), applicants filed a one (1)-month time extension, accompanied by an executed Declaration and the late filing surcharge. Accordingly, on 19 October, 2001, IPED mailed a Notice of Incomplete Reply (Nonprovisional) requiring compliance with 37 CFR 1.821-1.825, in regards to the Sequence Listing. The Notice stated that the time period for reply remained as set forth in the Notice mailed on 6 July, 2001.

In response, on 15 February, 2002 (certificate of mailing date 21 December, 2001), petitioners the Computer Readable Format (CRF) of the Sequence Listing, an initial paper copy, an amendment directing its entry, and the statement under 37 CFR 1.821.

The present petition also accompanied the Sequence Listing. Petitioners assert additional time should have been granted to comply with 37 CFR 1.821-1.825 because the reply of 24 September, 2001, was a *bona fide* reply. Petitioners request that the reply filed on 15 February, 2002, be accepted as timely filed, or, alternatively, that a new time period for submission of the response be provided.

OPINION

Petitioners seek waiver of the rules on the grounds that the delay in complying with 37 CFR 1.821-1.825 was "*bona fide* and there was no intention to delay proceedings in this case." Petitioners also complain that the Notice of Incomplete Reply was not received until 14 December, 2001, nearly three (3) months after petitioners' response was filed.

37 CFR 1.135(c) states:

> When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertantly omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

Petitioner's contention that a new time period should be set is not well taken, however, because the Notice mailed on 6 July, 2001, clearly stated that the application did not comply with the requirements of 37 CFR 1.821-1.825. As such, petitioners' reply filed on 24 September, 2001, was not substantially a complete reply. Furthermore, 37 CFR 1.135(c) states that the Office may, but is not required, to set a new time period for reply.

Although the USPTO attempts to notify parties as to defective papers in order to permit timely refiling, it has no obligation

to do so.[1] Rather, it is the applicants who are ultimately responsible for filing proper documents.[2] That there was a considerable delay in advising applicants that the reply to the Notice to File Missing Parts was not fully satisfactory is regretted, but, as noted above, part of applicants' assumed risk. That is, the failure to supply the proper reply was the fault of petitioners, not the PTO. As noted in Brenner v. Ebbert, 398 F.2d. 762, 765, 157 USPQ 609, 611 (D.C. Cir. 1968), *cert. den.* 159 USPQ 799:

> The Constitution requires notice reasonably designed to forewarn against approaching default; but it does not insure against the effects of a mistaken response to timely notice knowingly received.

In essence, petitioners seek to avoid payment of the four (4) month extension of time to reply to the Notice mailed on 6 July, 2001, by way of requesting a belated time period under 37 CFR 1.183, so as to make the belated reply timely.

Suspension of the rules under 37 CFR 1.183 should be considered herein, suspension may be granted in an "extraordinary situation, when justice requires". 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.

Here, as the statutes and regulations provide petitioners with the means for seeking acceptance of the delayed Sequence Listing abstract by way of extensions of time in accordance with 37 CFR 1.136(a), it is not necessary to also fashion an extraordinary remedy, even assuming such would constitute a proper exercise of the rules. Moreover, the PTO will not normally consider an extraordinary remedy, when the rules already provide an avenue for obtaining the relief sought.[3]

Applicant was given reasonable notice as to the necessity to timely file a Sequence Listing in compliance with 37 CFR 1.821-1.825 in the Notice mailed on 6 July, 2001. It follows, as noted above, that petitioner had received the reasonable notice

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[1] See In re Colombo Inc., 33 USPQ2d 1530, 1532. (Comm'r Pat. 1994).

[2] Id.

[3] See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pat. 1982).

required so as ensure a timely and full response. That petitioners failed to timely and adequately respond was unfortunate, but such failure did not operate to save this application from abandonment, nor was the failure to properly reply a circumstance beyond the control of petitioner in the exercise of reasonable care and diligence.[4] As such, there is no adequate showing of "an extraordinary situation" in which "justice requires" suspension of the rules.[5] Even assuming, *arguendo*, that clerical inadvertence or mistake led to petitioner's failure to submit a proper reply, such is not a grounds for requesting waiver of the regulations.[6]

Circumstances resulting from petitioners' failure to exercise due care, or lack of knowledge of, or failure to properly apply, the Patent statutes or rules of practice are not, in any event, extraordinary circumstances where the interests of justice require the granting of relief.[7]

The Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of petitioner, and petitioner is bound by the consequences of those actions or inactions.[8] Here, the problem at issue could also have been avoided by the exercise of ordinary care and diligence. 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.[9]

As petitioners have not shown any extraordinary circumstance where justice requires waiver of the rule, the petition will be

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[4] See Brenner, supra.

[5] See, Nitto Chem. Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (circumstances are not extraordinary, and do not require waiver of the rules, when a party makes an avoidable mistake in filing papers).

[6] See In re Kabushiki Kaisha Hitachi Seisakusho, 39 USPQ2d 1319, 1320 (Comm'r Pat. 1994) (clerical error causing delay leading to a loss of right does not warrant suspension of the rules).

[7] See, In re Tetrafluor, Inc., 17 USPQ2d 1160, 1162 (Comm'r Pats. 1990); In re Bird & Son, Inc. 195 USPQ 586, 588 (Comm'r Pats. 1977).

[8] Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987).

[9] U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

dismissed.

As authorized by the transmittal letter accompanying the present petition, counsel's deposit account, No. 50-1078, will be charged the petition fee of $130.00 for the present petition and a four (4) month extension of the time to reply to the Notice mailed on 6 July, 2001 in the amount of $1,440.00.

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

The application is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

Schwegman, Lundberg, Woessner & Kluth, P.A.
P.O. Box 2938
Minneapolis, MN 55402

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JAN 16 2003

OFFICE OF PETITIONS

In re Application of	:	
Robert Veilleux, et. al.	:	
Application No. 09/836,014	:	ON PETITION
Filed: April 17, 2001	:	
Attorney Docket No. 186.013US1	:	

This is a decision on the petition under 37 CFR 1.137(b) filed January 13, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The application is being forwarded to Technology Center 3600 for further processing.

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

UNITED STATES 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. ____

KEATING & BENNETT LLP
10400 EATON PLACE, SUITE 312
FAIRFAX, VA 22030

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JUN 29 2004

OFFICE OF PETITIONS

In re Application of
Norio Sakai
Application No. 09/836,081
Filed: April 17, 2001
Attorney Docket No. 36856.466

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

This is a decision on the petition, filed June 8, 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 May 20, 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 2827 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
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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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 STATES PATENT AND TRADEMARK OFFICE

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

MCI, INC.
1133 19TH STREET NW
4TH FLOOR
WASHINGTON, DC 20036

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MAR 23 2006
OFFICE OF PETITIONS

In re Application of	:
Shawn E. Wiederin et al	:
Application No. 09/836,147	: DECISION GRANTING PETITION
Filed: April 17, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. CDR-00-005	:

This is a decision on the petition, filed March 20, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on December 12, 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 2135 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

C:\Documents and Settings\FHicks\My Documents\470\Mar9\836147.wpd

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission), which includes the following language thereon: "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 in the application identified above. Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DEC 28 2004

In re Application of	:	
Lefevre, Christophe	:	NOTICE OF WITHDRAWAL
Serial No. 09/836,158	:	FROM ISSUE
Filed: April 17, 2001	:	
For: SOLID COMBUSTIBLE ELEMENT FOR	:	
DISINTEGRATING A COMBUSTION DEPOSIT	:	
LAYER AND METHOD FOR PRODUCING	:	
SUCH AN ELEMENT	:	

The above-identified application is withdrawn from issue after payment of the issue fee because at the time of payment of the extension of time and notice of appeal fees on November 3, 2003, the applicant did not qualify for small entity status. As there was no previous authorization in the file to charge the balance of fees due the case is held to be abandoned for failure to timely reply to the final Office action of May 22, 2003. As such, the application is being withdrawn from issue to process a Notice of Abandonment.

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Vasu Jagannathan at (571) 272-1119.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Maria Parrish Tungol
5820 Fifer Drive
Suite 100
Alexandria, VA 22303

cc: Allowed Files—Pk3-910

UNITED STATES 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 02-05

MARIA PARRISH TUNGOL
5820 FIFER DRIVE
SUITE 100
ALEXANDRIA, VA 22303

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FEB 08 2005

OFFICE OF PETITIONS

In re Application of	:	
Christophe Lefevre	:	
Application No. 09/836,158	:	ON PETITION
Filed: 17 April, 2001	:	
Att'y Docket No. KOB 18	:	

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 19 January, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

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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 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 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)).

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

This application became abandoned on 23 August, 2003, for failure to file a proper reply to the final Office action mailed on 22 May, 2003, which set a three (3) month shortened statutory period for reply. On 3 November, 2003 (certificate of mailing date 22 October, 2003), petitioner submitted a Notice of Appeal and a two (2) month extension of time. The Notice of Appeal and extension of time fees, however, were paid in the small entity amount while no assertion of small entity status had ever been filed. On 5 March, 2004, petitioner filed a statement of small entity status along with a petition for extension of the time to reply to the Notice of Appeal petitioner attempted to file on 22 October, 2003.

On 27 July, 2004, a Notice of Allowance and Issue Fee Due was mailed, requiring payment of the issue fee in the large entity amount, and the publication fee. On 26 October, 2004, petitioner submitted payment of the issue fee in the small entity amount, and payment of the small entity amount.

On 14 December, 2004, a Notice of Abandonment was mailed for failure to timely pay the issue fee.

On 28 December, 2004, a Notice of Withdrawal from Issue was mailed, stating the application was being withdrawn from issue because of the fee deficiency.

Petitioner asserts that $395.00 was paid on 8 October, 2004, to complete the large entity fees for the Notice of Appeal and extension of time petitioner attempted to file on 3 November, 2003. Petitioner states that the request to apply this amount to the fee deficiency was denied, and requests that this amount be applied towards the petition fee of $750.00. Petitioner has submitted an additional $355.00 with the present petition.

The petition is dismissed because the proper petition fee has not been paid. The Office acknowledges receipt of the $395.00 paid on 8 October, 2004. A petition under 37 CFR 1.137(b) must be accompanied by a proper reply, and the $395.00 is indeed required to complete the large entity fees for the Notice of Appeal and two (2) month extension of time submitted in response to the

final Office action and make the Notice of Appeal and extension of time a proper reply. As such, the petition fee is required in full in order to revive this application. In order for the petition under 37 CFR 1.137(b) to be grantable, petitioner must submit the balance due (currently $395.00) to complete the petition fee.

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

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

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

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

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Commissioner for Patents
United States Patent and Trademark Office
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MARIA PARRISH TUNGOL
5820 FIFER DRIVE
SUITE 100
ALEXANDRIA, VA 22303

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FEB 22 2005

OFFICE OF PETITIONS

In re Application of	:	
Christophe Lefevre	:	CORRECTED DECISION
Application No. 09/836,158	:	ON PETITION
Filed: 17 April, 2001	:	
Att'y Docket No. KOB 18	:	

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 19 January, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 23 August, 2003, for failure to file a proper reply to the final Office action mailed on 22 May, 2003, which set a three (3) month shortened statutory period for reply. On 3 November, 2003 (certificate of mailing date 22

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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 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 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)).

October, 2003), petitioner submitted a Notice of Appeal and a two (2) month extension of time. The Notice of Appeal and extension of time fees, however, were paid in the small entity amount while no assertion of small entity status had ever been filed. On 5 March, 2004, petitioner filed a statement of small entity status along with a petition for extension of the time to reply to the Notice of Appeal petitioner attempted to file on 22 October, 2003.

On 27 July, 2004, a Notice of Allowance and Issue Fee Due was mailed, requiring payment of the issue fee in the large entity amount, and the publication fee. On 26 October, 2004, petitioner submitted payment of the issue fee in the small entity amount, and payment of the small entity amount.

On 14 December, 2004, a Notice of Abandonment was mailed for failure to timely pay the issue fee.

On 28 December, 2004, a Notice of Withdrawal from Issue was mailed, stating the application was being withdrawn from issue because of the fee deficiency.

Petitioner asserts that $395.00 was paid on 8 October, 2004, to complete the large entity fees for the Notice of Appeal and extension of time petitioner attempted to file on 3 November, 2003. Petitioner states that the request to apply this amount to the fee deficiency was denied, and requests that this amount be applied towards the petition fee of $750.00. Petitioner has submitted an additional $355.00 with the present petition.

In light of the small entity status statement filed on 25 October, 2004, the fees paid on 8 October, 2004, will be applied towards the petition fee of $750.00. As such, the proper petition fee has now been received.

The application is being forwarded to Technology Center Art Unit 1714 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

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
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MARIA PARRISH TUNGOL
5820 FIFER DRIVE
SUITE 100
ALEXANDRIA, VA 22303

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FEB 22 2005

OFFICE OF PETITIONS

In re Application of	:
Christophe Lefevre	:
Application No. 09/836,158	: DECISION ON PETITION
Filed: April 17, 2001	: UNDER 37 CFR 1.28(c)
Attorney Docket No. KOB 18	:

This is a decision on the "Payment of Balance of Fees for Large Entity," filed October 26, 2004, which is being treated as a petition under 37 CFR 1.28(c).

The petition is dismissed.

Petitioner states that, during the prosecution of the application, certain fees were mistakenly paid in the small entity amount prior to conversion to small entity status. Accordingly, petitioner has submitted a $220 fee deficiency for the two month extension of time filed on October 22, 2003 and a $175 fee deficiency for the Notice of Appeal filed on November 3, 2003.

As the present application did not qualify for small entity status at the time of payment of the extension of time and notice of appeal fees at the time of their submission on November 3, 2003, and as there was no authorization in the file to charge the balance of the fees due, this application was held abandoned for failure to timely reply to the final Office action of May 22, 2003. Accordingly, the $220 and $175 fees submitted with the instant petition cannot be accepted under the provisions of 37 CFR 1.28(c).

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

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

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

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

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

Frances Hicks

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
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Alexandria, VA 22313-1450
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OIPE JC19
MAY 2 6 2005
PATENT & TRADEMARK OFFICE

DEC 2 8 2004

In re Application of
Lefevre, Christophe
Serial No. 09/836,158
Filed: April 17, 2001
For: SOLID COMBUSTIBLE ELEMENT FOR DISINTEGRATING A COMBUSTION DEPOSIT LAYER AND METHOD FOR PRODUCING SUCH AN ELEMENT

NOTICE OF WITHDRAWAL FROM ISSUE

The above-identified application is withdrawn from issue after payment of the issue fee because at the time of payment of the extension of time and notice of appeal fees on November 3, 2003, the applicant did not qualify for small entity status. As there was no previous authorization in the file to charge the balance of fees due the case is held to be abandoned for failure to timely reply to the final Office action of May 22, 2003. As such, the application is being withdrawn from issue to process a Notice of Abandonment.

The above-identified application is hereby withdrawn from issue.

The issue fee is refundable upon written request. If, however, the application is again found allowable, the issue fee can be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due upon written request. This request and any balance due must be received on or before the due date noted in the new Notice of Allowance in order to prevent abandonment of the application.

Telephone inquiries should be directed to Vasu Jagannathan at (571) 272-1119.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Maria Parrish Tungol
5820 Fifer Drive
Suite 100
Alexandria, VA 22303

cc: Allowed Files—Pk3-910

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MAY 2 6 2005 JC19 PATENT & TRADEMARK OFFICE

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 (703) 746-4000

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)

7590 07/27/2004

Maria Parrish Tungol
~~1625 Eye Street, N.W.~~
~~Suite 400~~
~~Washington, DC 20006~~

5820 Fifer Drive
Suite 100
Alexandria, VA 22303

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 (703) 746-4000, on the date indicated below.

Maria P. Tungol (Depositor's name)
(Signature)
October 15, 2004 (Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,158	04/17/2001	Christophe Lefevre	KOB 18	7357

TITLE OF INVENTION: SOLID COMBUSTIBLE ELEMENT FOR DISINTEGRATING A COMBUSTION DEPOSIT LAYER AND METHOD FOR PRODUCING SUCH AN ELEMENT

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	$1330	$300	$1630	10/27/2004

EXAMINER	ART UNIT	CLASS-SUBCLASS
TOOMER, CEPHIA D	1714	044-640000

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 Maria Parrish Tungol
2
3

COPY

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: NV BEHOKO

(B) RESIDENCE: (CITY and STATE OR COUNTRY): Waregem, Belgium

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 _____

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 _____ (enclose an extra copy of this form).

5. Change in Entity Status (from status indicated above)
☒ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.
☐ b. Applicant is not claiming SMALL ENTITY status. See, e.g., 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) October 15, 2004

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 of the application 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, Washington, DC 20231-0001. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Alexandria, VA 22313-1450.

SN 09 836158

COPY

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JOHN A PARRISH
MARIA P TUNGOL
304 BERKLEY RD
MERION STA PA 19066-1404

Date 10/14/04 60-192/319

Pay to the order of Commissioner for Patents $985.00

Nine hundred eighty-five and ____ Dollars

WILMINGTON TRUST
Wilmington Trust of Pennsylvania
West Chester, Pennsylvania 19380

For Issue fee

⑈0256⑈ ⑆031900192⑆ 000 3510218 3⑈ 0008

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OIPE JC19
MAY 2 6 2005
PATENT & TRADEMARK OFFICE

Appl. No. 09 836 158
Paper dated May 26, 2005
Reply to Office action mailed May 20, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

LEFEVRE	
SERIAL NO. 09 836 158	**Art Unit: 1714**
FILED: APRIL 17 2001	**Examiner: TOOMER**
FOR: SOLID COMBUSTIBLE ELEMENT FOR DISINTEGRATING A COMBUSTION DEPOSIT LAYER AND METHOD FOR PRODUCING . . .	Docket No: KOB 18

Commissioner for Patents
Alexandria, VA 22313

ISSUE FEE PAYMENT

Sir:

In response to the Notice of Allowance mailed May 20, 2005, Applicant requests that the issue fee payment of $985 filed with a PTOL 85 on October 15, 2004 be applied to the issue fee now due. The issue fee for a small entity was increased on December 8, 2004.

In view of the attached Notice of Withdrawal from Issue from the Director of Tech Center dated December 28, 2004, Applicant encloses a Credit Card Payment Form authorizing payment of $15 for the balance of the issue fee and publication fee for a small entity (($700+300) - 985 = $15) with a copy of the PTOL 85 mailed on May 20, 2005.

Respectfully submitted,

LEFEVRE

BY _____
Maria Parrish Tungol
Registration No. 31,720
Telephone: (571 275 1111)

I hereby certify that this paper is being facsimile transmitted to 703 746 4000 at the Patent and Trademark Office on May 26, 2005 By: _____

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#15

FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

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FEB 19 2004

OFFICE OF PETITIONS

Applicant: Lang et al.
Appl. No.: 09/836,169
Filing Date: July 27, 2001
U.S. Patent No.: 6,610,545
Issue Date: August 26, 2003
Title: NUCLEOTIDE SEQUENCE ENCODING THE ENZYME I-SCEI AND THE USES THEREOF
Attorney Docket No.: 03495-0111-12
Pub. No.: US 2003/0113887 A1
Pub. Date: June 19, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on August 14, 2003.

The request is DISMISSED as moot.

The instant request identifies numerous errors in the published patent application publication. Since the application has already issued as U.S. Patent No. 6,610,545 on August 26, 2003, the request is deemed moot

The application is being forwarded to the files repository.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
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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Paper No. 7

CHARLES R. SUTTON
201 SOUTH LAKE AVENUE
SUITE 302
PASADENA, CA 91101

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APR 0 5 2004

OFFICE OF PETITIONS

In re Application of	:	
Chen	:	
Application No. 09/836,191	:	ON PETITION
Filed: April 18, 2001	:	
For: AIR CONDITIONER TEMPERATURE EXCHANGER	:	

This decision concerns the March 26, 2004 petition under 37 CFR 1.137(b).

The petition is **DISMISSED.**

The application became abandoned on March 8, 2002 for failure to timely file a proper response to the December 7, 2001 non-final Office Action.

The instant petition, filed by Applicant, seeks to revive the application under 37 CFR 1.137(b).

A grantable petition under 37 CFR 1.137(b), in the instant case, must be accompanied by: (1) the required reply to the December 7, 2001 non-final Office Action; (2) the $665 petition fee (small entity); and (3) a statement that the entire delay in filing the required reply from the due date until the filing of a grantable §1.137(b) petition was unintentional.

The petition lacks item (2), in that, a payment of only $650 was submitted for paying the $665 petition fee. The Office was unable to locate any authorization to charge the $15 deficiency to a deposit account or a credit card. The petition is thus dismissed.

A renewed §1.137(b) petition must be:

-filed within **TWO MONTHS** of the mailing date of this decision;
-accompanied by the $15 petition fee deficiency;[1] and

[1] Any information already filed with the instant petition should not be re-submitted.

should be addressed to:

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Finally, the power of attorney filed with the petition has been entered and made of record.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

Attachments: Notice Regarding Change of Power of Attorney (revoking prior powers of attorney)
Notice of Acceptance of Power of Attorney (accepting 3/26/04 Power of Attorney)

UNITED STATES 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. 9

CHARLES R. SUTTON
201 SOUTH LAKE AVENUE
SUITE 302
PASADENA, CA 91101

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MAY 0 4 2004
OFFICE OF PETITIONS

In re Application of :
Chen :
Application No. 09/836,191 : ON PETITION
Filed: April 18, 2001 :
For: AIR CONDITIONER TEMPERATURE :
EXCHANGER :

This decision concerns the April 13, 2004 renewed petition under 37 CFR 1.137(b).

The petition is **GRANTED.**

The application became abandoned on March 8, 2002 for failure to timely file a proper response to the December 7, 2001 non-final Office Action.

The March 26, 2004 petition under 37 CFR 1.137(b) was dismissed, in that, it was accompanied by a $650 payment for the $665 petition fee (small entity).

The instant renewed petition encloses the $15 fee deficiency and states that the entire delay in filing the required reply from the due date until the filing of a grantable §1.137(b) petition was unintentional. The petition is thus granted.

The application file is being returned to Technology Center 3700 for review of the March 26, 2004 "Amendments to Claims."

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
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. 9

CHARLES R. SUTTON
14507 SYLVAN ST., STE. 208
VAN NUYS CA 91411

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APR 2 7 2004

OFFICE OF PETITIONS

In re Application of :
Tsung-Chih Chen :
Application No. 09/836,192 :
Filed: April 1, 2004 :
Attorney Docket No. BHT-3106-136 :

ON PETITION

This is a decision on the petition, filed March 29, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed December 7, 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. A Notice of Abandonment was mailed on October 7, 2002. On March 29, 2004, an amendment and the present petition were filed.

The petition is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9220. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center AU 3744 for consideration of the amendment filed March 29, 2004.

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
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LOUIS WOO
LAW OFFICE OF LOUIS WOO
717 NORTH FAYETTE STREET
ALEXANDRIA VA 22314

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SEP 01 2005

OFFICE OF PETITIONS

In re Application of
LILLBACKA et al.
Application No. 09/836,199
Filed: April 18, 2001
Attorney Docket No. 0103/0070

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 12, 2004, 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 a Notice to File Corrected Application Papers mailed May 4, 2001, which set a period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Outside any regulatory period for response set forth in 37 CFR 1.136(a) to the Notice of May 4, 2001, subsequent Notices to File Corrected Application Papers were mailed to the Applicants' representative. Consistent with Lorenz v. Finkl, 142 USPQ 26, 30 (CCPA 1964), these subsequent actions by the Office do not rescue the application from abandonment. Accordingly, the application became abandoned on July 5, 2001.

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 drawings in compliance with 37 CFR 1.84; (2) the petition fee of $685; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of May 4, 2001 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Office of Initial Patent Examination.

Frances Hicks for
Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 15

OLIFF & BERRIDGE PLC
P O BOX 19928
ALEXANDRIA, VA 22320

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SEP 15 2004

OFFICE OF PETITIONS

In re Application of
Akihiro Hosokawa et al
Application No. 09/836,201
Filed: April 18, 2001
Attorney Docket No. 109305

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

This is a decision on the petition, filed September 10, 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 August 13, 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.

Upon receipt of the file in the Office of Petitions and association of the instant petition, RCE, IDS and decision on petition with the file, the file will be forwarded to Technology Center AU 2651 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

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

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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 STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 12

NAIPO (NORTH AMERICA INTERNATIONAL PATENT OFFICE)
P.O. Box 506
Merrifield, VA 22116

OCT - 9 2003

In re Application of:	:	
CHIEN *et al.*	:	
Serial No.: 09/836,258	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Filed: April 18, 2001	:	
Attorney Docket No.: **NAUP0280USA0**	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed August 18, 2003.

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, which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by Mord Michael Lewis on behalf of himself.

The request is **APPROVED**.

Winston Hsu remains as attorney of record at this time. It is noted that this application is now abandoned.

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

Inquiries related to this decision should be directed to Clayton E. LaBalle at (703) 308-0519.

Clayton E. LaBalle, Special Programs 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
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Paper No. 14

(NAIPC) NORTH AMERICA INTERNATIONAL PATENT OFFICE
P.O. BOX 506
MERRIFIELD, VA 22116

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DEC 0 9 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Chen, et al. :
Application No. 09/836,258 :
Filed: April 18, 2001 :
Attorney Docket No. NAUP0280USA

This is a decision on the petition under 37 CFR 1.137(a), filed September 30, 2004, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any request for reconsideration or petition under 37 CFR 1.137(b) 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.

The above-identified application became abandoned for failure to reply to file a timely response to the Notice of Allowance and Issue Fee Due, which set a statutory period for reply of three (3) months from its mailing date of August 13, 2002. A proper response was not received within the allowed period, and the application became abandoned on November 14, 2002. A Notice of Abandonment was mailed on December 26, 2002.

A grantable petition under 37 CFR 1.137(a)[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(1); (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 required by 37 CFR 1.137(c).

[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.

The instant petition lacks items (3).

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] 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] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

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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' 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.

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading 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 states that the issue fee and publication fee were paid by checks remitted on November 25, 2002.

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reason petitioner's argument must necessarily fail are addressed below.

Petitioner is advised that the Office received the issue and publications fees, however; the payments were not timely made. The Notice of Allowance and Issue Fee set forth a non-extendable statutory period for reply of three months from its mailing date. The notice was mailed on August 13, 2004, requiring a response—payment of the issue fee—by midnight on November 13, 2004. The record reflects that the issue fee and publication fee were paid on November 26, 2002. The Issue Fee Transmittal did not contain an executed certificate of mailing pursuant to 37 CFR 1.8, therefore; the issue and publication fees were noted as being received on November 26, 2002. As the period for response was three months from the mailing date of the notice, the payment of issue and publication fees on November 26, 2002, was untimely and resulted in the abandonment of the application, accordingly. While no reply is currently due because the issue fee and publication fee have been received, petitioner is required to file a grantable petition under 37 CFR 1.137 in order to revive the application. Absent some mitigating circumstance, it does not appear that the petition under 37 CFR 1.137(a) would be granted because the facts as set forth in petition indicate that the issue fee payment was not mailed until November 25, 2002—well after the expiration of the three month statutory period set for reply. Petitioner would not have been able to take advantage of the certificate of mailing procedures pursuant to 37 CFR 1.8 to try to make the payments timely. It is unlikely that significant evidentiary burden presented by 37 CFR 1.137(a) would be able to be met given the facts set forth in the petition.

Petitioner has also failed to satisfy the requirements of item (3) above because a successful petition under 37 CFR 1.137(a) requires that petitioner establish 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 1.17(a)--was unavoidable. The due date for the reply was November 13, 2002, and the instant petition was not filed until September 30, 2004. In order for the petition under 37 CFR

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[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 nonawarness 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.

1.1.37(a) to be considered grantable, petitioner must provide an explanation (that amounts to unavoidable delay) for the nearly two year delay in filing a petition under 37 CFR 1.137(a).

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,370.00 for a large entity and $685.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

UNITED STATES PATENT AND TRADEMARK OFFICE

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NORTH AMERICA INTERNATIONAL
PATENT OFFICE (NAIPC)
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MERRIFIELD, VA 22116

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OFFICE OF PETITIONS

In re Application of

Chen, et al.

Application No. 09/836,258

Filed: April 81, 2001

Attorney Docket No. NAUP0280USA

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), December 28, 2004, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a timely response to the Notice of Allowance and Issue Fee Due, mailed August 13, 2002, which set a statutory period for reply of two months from its mailing date. A proper response was not received within the allowed period, and the application became abandoned on November 14, 2002. A Notice of Abandonment was mailed on December 26, 2002.

The issue fee of $1280.00 and the publication fee of $300.00 were received on November 26, 2002.

The petition fee of $1,500.00 will be charged to deposit account 50-3105.

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Attachment 1

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUL 2 5 2005
PATENT & TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

In re Application of

Chen, et al.

Application No. 09/836,258

Filed: April 81, 2001

Attorney Docket No. NAUP0280USA

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), December 28, 2004, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to file a timely response to the Notice of Allowance and Issue Fee Due, mailed August 13, 2002, which set a statutory period for reply of two months from its mailing date. A proper response was not received within the allowed period, and the application became abandoned on November 14, 2002. A Notice of Abandonment was mailed on December 26, 2002.

✓ The issue fee of $1280.00 and the publication fee of $300.00 were received on November 26, 2002.

The petition fee of $1,500.00 will be charged to deposit account 50-3105.

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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KENYON & KENYON
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WASHINGTON, DC 20005

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OFFICE OF PETITIONS

In re Application of :
Eilon Riess et al. :
Application No. 09/836,281 : ON PETITION
Filed: April 18, 2001 :
For: RELIABLE SYMBOLS AS A MEANS OF IMPROVING THE PERFORMANCE OF INFORMATION TRANSMISSION SYSTEMS :

This is a decision on the petition under 37 CFR 1.183 filed September 18, 2001, requesting waiver of the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code (title 35), and publication of only the redacted copy of the above-identified application under 37 CFR 1.217.

The petition to waive the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35, and to publish only the redacted copy of the above-identified application under 37 CFR 1.217 is **DENIED**.

BACKGROUND

The above-identified application was filed under 35 U.S.C. § 111(a) and 37 CFR 1.53(b) on April 18, 2001. The application included an authorization to charge the filing fee to a deposit account but did not include an oath or declaration under 37 CFR 1.63.

On June 20, 2001, the United States Patent and Trademark Office (USPTO) issued a Notice to File Missing Parts of Nonprovisional Application requiring an oath or declaration under 37 CFR 1.63 and the surcharge under 37 CFR 1.16(e).

On July 16, 2001, petitioners submitted, *inter alia*, a declaration under 37 CFR 1.63 and the surcharge under 37 CFR 1.16(e). The declaration under 37 CFR 1.63 included claims to the benefit of international application PCT/GB 00/02634 (filed July 10, 2000), international application PCT/GB 00/02648 (filed July 10, 2000), United Kingdom application GB0016938.3 (filed July 10, 2000), and United Kingdom application GB9926167.9 (filed November 4, 1999).

On September 18, 2001, petitioners submitted: (1) a redacted copy of the above-identified application via the USPTO's electronic filing system; (2) a certified copy of each of international application PCT/GB 00/02634, international application PCT/GB 00/02648, United Kingdom application GB0016938.3, and United Kingdom application GB9926167.9; (3) a marked-up copy of the application showing the redactions in brackets; (4) a certification that the redacted copy of the application eliminates only the part of the description of the invention that is not contained in any of the four foreign-filed patent applications to which the above-identified application claims priority; and (5) a petition under 37 CFR 1.183 requesting waiver of the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35.

STATUTE AND REGULATION

35 U.S.C. § 122[1] provides that:

> (a) CONFIDENTIALITY-- Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.
> (b) Publication--
> (1) IN GENERAL-- (A) Subject to paragraph (2), each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.
> (B) No information concerning published patent applications shall be made available to the public except as the Director determines.
> (C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

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[1] See 35 U.S.C. § 122 (Supp. V 1999).

(2) EXCEPTIONS-- (A) An application shall not be published if that application is--

(i) no longer pending;

(ii) subject to a secrecy order under section 181 of this title;

(iii) a provisional application filed under section 111(b) of this title; or

(iv) an application for a design patent filed under chapter 16 of this title.

(B)(i) If an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).

(ii) An applicant may rescind a request made under clause (i) at any time.

(iii) An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.

(iv) If an applicant rescinds a request made under clause (i) or notifies the Director that an application was filed in a foreign country or under a multilateral international agreement specified in clause (i), the application shall be published in accordance with the provisions of paragraph (1) on or as soon as is practical after the date that is specified in clause (i).

(v) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign filed applications corresponding to an application filed in the Patent and Trademark Office or the description of the invention in such foreign filed applications is less extensive than the application or description of the invention in the application filed in the Patent and Trademark Office, the applicant may submit a redacted copy of the application filed in the Patent and Trademark Office eliminating any part or description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country. The Director may only publish the redacted copy of the application unless the redacted copy of the application is not received within 16 months after the earliest effective filing date for which a benefit is sought under this title. The provisions of section 154(d) shall not apply to a claim if the description of the invention published in the redacted application filed under this clause with respect to the claim does not enable a person skilled in the art to make and use the subject matter of the claim.

(c) PROTEST AND PRE-ISSUANCE OPPOSITION-- The Director shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent on an application may be initiated after publication of the application without the express written consent of the applicant.

(d) NATIONAL SECURITY-- No application for patent shall be published under subsection (b)(1) if the publication or disclosure of such invention would be detrimental to the national security. The Director shall establish appropriate procedures to ensure that such applications are promptly identified and the secrecy of such inventions is maintained in accordance with chapter 17 of this title.

37 CFR 1.183[2] 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 Commissioner or the Commissioner'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(h).

37 CFR 1.215[3] provides that:

(a) The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the application papers deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825, except as otherwise provided in this section. The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

(b) If applicant wants the patent application publication to include assignee information, the applicant must include the assignee information on the application transmittal sheet or the application data sheet (§ 1.76). Assignee information may not be included on the patent application publication unless this information is

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[2] See 37 CFR 1.183 (2001).

[3] See 37 CFR 1.215 (2001).

provided on the application transmittal sheet or application data sheet included with the application on filing. Providing this information on the application transmittal sheet or the application data sheet does not substitute for compliance with any requirement of part 3 of this chapter to have an assignment recorded by the Office.

(c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended during examination, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the actual filing date of the application or fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

(d) If the copy of the application submitted pursuant to paragraph (c) of this section does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in paragraph (a) of this section. If, however, the Office has not started the publication process, the Office may use an untimely filed copy of the application supplied by the applicant under paragraph (c) of this section in creating the patent application publication.

37 CFR 1.217[4] provides that:

(a) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office for publication, eliminating any part or description of the invention that is not also contained in any of the corresponding applications filed in a foreign country. The Office will publish the application as provided in § 1.215(a) unless the applicant files a redacted copy of the application in compliance with this section within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code.

(b) The redacted copy of the application must be submitted in compliance with the Office electronic filing system requirements. The title of the invention in the redacted copy of the application must correspond to the title of the application at the time the redacted copy of the application is submitted to the Office. If the redacted copy of the application does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in § 1.215(a).

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[4] See 37 CFR 1.217 (2001).

(c) The applicant must also concurrently submit in paper (§ 1.52(a)) to be filed in the application:

(1) A certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted;

(2) A translation of each such foreign-filed application that is in a language other than English, and a statement that the translation is accurate;

(3) A marked-up copy of the application showing the redactions in brackets; and

(4) A certification that the redacted copy of the application eliminates only the part or description of the invention that is not contained in any application filed in a foreign country, directly or through a multilateral international agreement, that corresponds to the application filed in the Office.

(d) The Office will provide a copy of the complete file wrapper and contents of an application for which a redacted copy was submitted under this section to any person upon written request pursuant to § 1.14(c)(2), unless applicant complies with the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) Applicant must accompany the submission required by paragraph (c) of this section with the following:

(i) A copy of any Office correspondence previously received by applicant including any desired redactions, and a second copy of all Office correspondence previously received by applicant showing the redacted material in brackets; and

(ii) A copy of each submission previously filed by the applicant including any desired redactions, and a second copy of each submission previously filed by the applicant showing the redacted material in brackets.

(2) In addition to providing the submission required by paragraphs (c) and (d)(1) of this section, applicant must:

(i) Within one month of the date of mailing of any correspondence from the Office, file a copy of such Office correspondence including any desired redactions, and a second copy of such Office correspondence showing the redacted material in brackets; and

(ii) With each submission by the applicant, include a copy of such submission including any desired redactions, and a second copy of such submission showing the redacted material in brackets.

(3) Each submission under paragraph (d)(1) or (d)(2) of this paragraph must also be accompanied by the processing fee set forth in § 1.17(i) and a certification that the redactions are limited to the elimination of material that is relevant only to the part or description of the invention that was not contained in the redacted copy of the application submitted for publication.

(e) The provisions of § 1.8 do not apply to the time periods set forth in this section.

DECISION

Petitioners request waiver of the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35, and that the USPTO publish only the redacted copy of the above-identified application under 37 CFR 1.217. Petitioners argue, *inter alia*, that: (1) the sixteen-month filing period requirement in 37 CFR 1.217(a) is not a requirement of statute, in that the USPTO must publish only a redacted version if a redacted copy of the application is filed by that date, but may publish a redacted version in other circumstances provided that the other conditions of 35 U.S.C. § 122(b)(2)(B)(v) are met; (2) filing a redacted copy of the application within the sixteen-month period set forth in 37 CFR 1.217(a) was an impossibility in the above-identified application, as the above-identified application was not filed until more than sixteen months after the earliest claimed priority date; and (3) the assignee of the above-identified application is particularly sensitive to the disclosure of proprietary technology and desires to maintain it in confidentiality for as long as possible.

The American Inventors Protection Act of 1999 (AIPA) was enacted into law on November 29, 1999. See Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999). The AIPA contained a number of changes to title 35, including provisions for the publication of pending applications for patent, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35 ("eighteen-month publication"). The eighteen-month publication provisions of the AIPA became effective on November 29, 2000, and apply to all applications filed on or after November 29, 2000. See Pub. L. 106-113, 113 Stat. at 1501A-566 through 1501A-567. The USPTO implemented the eighteen-month publication provisions of the AIPA in a final rule published in September of 2000. See Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office 63 (Oct. 10, 2000) (final rule). The USPTO indicated in that final rule that the sixteen-month period in 37 CFR 1.217(a) is provided by statute (specifically, 35 U.S.C. § 122(b)(2)(B)(v)), and as such, requests for waiver of this sixteen-month period will be denied. See id. at 57036, 1239 Off. Gaz. Pat. Office at 74.

While the language of 35 U.S.C. § 122(b)(2)(B)(v) ("[t]he Director may only publish the redacted copy of the application unless the redacted copy of the application is not received within 16 months after the earliest effective filing date for which a benefit is sought under this title") taken in isolation may suggest that the USPTO has discretion to publish either a redacted or a complete copy of the application if a redacted copy of the application is filed later than sixteen months after the earliest filing date for which a benefit is claimed under title 35, such a reading of 35 U.S.C. § 122(b)(2)(B)(v) is inconsistent with the statutory scheme and legislative history of 35 U.S.C. § 122(b).

35 U.S.C. § 122(b)(1)(A) provides that, subject to 35 U.S.C. § 122(b)(2), "each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under [title 35]." See 35 U.S.C. § 122(b)(1)(A). That is, the USPTO is to publish each application after eighteen months from the earliest filing date for which a benefit is sought under title 35 in accordance with the USPTO's procedures for the publication of applications unless the application falls within an exception provided in 35 U.S.C. § 122(b)(2).[5]

The above-identified application does not fall within any exception provided in 35 U.S.C. § 122(b)(2). The above-identified application is a pending nonprovisional utility application that is not subject to a secrecy order under 35 U.S.C. § 181 (or whose disclosure otherwise raises national security concerns). See 35 U.S.C. § 122(b)(2)(A). The application was not filed with a nonpublication request containing a certification that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen month publication of applications. See 35 U.S.C. § 122(b)(2)(B)(i)-(iv). Finally, while petitioners may have filed applications in a foreign country and under a multilateral international agreement with a cumulative description of the invention that is less extensive than the description of the invention in the above-identified application, petitioners did **not** submit a redacted copy of the application within sixteen months after the earliest effective filing date for which a benefit is sought under title 35. See 35 U.S.C. § 122(b)(2)(B)(v). Therefore, the above-identified application does not fall within an exception provided in 35 U.S.C. § 122(b)(2), and the USPTO is required to publish the application as provided in 35 U.S.C. § 122(b)(1).

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[5] The legislative history of the eighteen-month publication provisions of the AIPA demonstrates that the exceptions to publication provided in 35 U.S.C. § 122(b)(2) are not mere statements of minimum conduct, but mark the line of demarcation between: (1) the applications that the USPTO must maintain in confidentiality under 35 U.S.C. § 122(a) to the extent that publication is precluded or limited under 35 U.S.C. § 122(b)(2); and (2) the applications that the USPTO must publish as provided in 35 U.S.C. § 122(b)(1) if the exceptions to publication provided in 35 U.S.C. § 122(b)(2) are not applicable. See 145 Cong. Rec. S14,708, S14,718 (daily ed. Nov. 17, 1999) (section-by-section analysis of S. 1948 printed in the Congressional Record at the request of Senator Lott) (35 U.S.C. § 122(b)(2) enumerates exceptions to the general rule requiring publication). In addition, the legislative history of the eighteen-month publication provisions of the AIPA indicates that Congress did not envision the USPTO publishing only a redacted copy of an application based upon a redacted copy of the application filed outside of the sixteen-month period provided in 35 U.S.C. § 122(b)(2)(B)(v). See 145 Cong. Rec. at S14,719 (to ensure that any redacted copy of the application is published in place of the original U.S. application, the redacted copy must be received within sixteen months from the earliest effective filing date).

The procedures for publication of applications under 35 U.S.C. § 122(b) are set forth in 37 CFR 1.211 through 1.221. These procedures do not provide for the publication of only a redacted copy of an application in the situation in which the redacted copy of the application was not filed within sixteen months of the earliest claimed priority date. Therefore, granting petitioners' request to publish only a redacted copy of the above-identified application would constitute publication of the application under a procedure developed on an ad hoc basis. Such a publication of the above-identified application would not meet the statutory requirement that the above-identified application be published "in accordance with procedures determined by the Director" (*i.e.*, the procedures set forth in 37 CFR 1.211 through 1.211). See 35 U.S.C. § 122(b)(1)(A).

Accordingly, the USPTO maintains that waiving the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35 would be inconsistent with the provisions of 35 U.S.C. § 122(b).

Assuming, *arguendo*, that the USPTO has the authority to waive the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35, there is no showing as to why the circumstances at issue constitute an extraordinary situation in which justice requires the USPTO to waive this requirement of 37 CFR 1.217(a).

The AIPA required the USPTO to implement procedures and a process for the eighteen-month publication of each pending application (with certain exceptions) within one year of the date of enactment of the AIPA. Implementing the eighteen-month publication process was and continues to be the most resource consuming change required by the AIPA. The USPTO is now publishing approximately 2,000 applications each week, and the USPTO expects to be publishing between 4,000 and 5,000 applications each week once eighteen-month publication reaches a steady-state operation by the summer of 2002. Obviously, the USPTO's approach to eighteen-month publication must, by the nature of the task, be to publish each application (other than those exempt from publication) according to the established procedures. The USPTO cannot reasonably be expected to handle these publication volumes and still allow for the nature of how any particular application is to be published to be determined on an ad hoc basis.

The exceptions to eighteen-month publications specified in 35 U.S.C. § 122(b)(2)(B)(i)-(iv) (applications filed with a nonpublication request) and 122(b)(2)(B)(v) (applications for which a redacted copy is submitted for publication) add to challenges involved in the eighteen-month publication process. In particular, the provisions for the publication and subsequent handling of an application for which a redacted copy is submitted for publication place an inordinate burden on the USPTO. See Changes to Implement Eighteen-Month Publication of Patent Applications, 65 Fed. Reg. at 57048, 1239 Off. Gaz. Pat. Office at 84-85. Therefore, the USPTO considers it inappropriate to publish a redacted copy of any application and subsequently treat the application

as provided in 37 CFR 1.217(d) unless the redacted copy is submitted in compliance with 37 CFR 1.217(a) and (b) within sixteen months after the earliest effective filing date.

Petitioners' argument that filing a redacted copy of the application within the sixteen-month period set forth in 37 CFR 1.217(a) was an impossibility, in the above-identified application as the above-identified application was not filed until more than sixteen months after the earliest claimed priority date, is not well taken.[6] There is nothing in the patent statute or regulations that prevented petitioners from: (1) filing a first application containing only the subject matter cumulatively disclosed in the four priority applications and claims whose limitations are cumulatively disclosed in the four priority applications (claims corresponding to claims 19, 24, and 25) and claiming the benefit of the four priority applications in the first application; and (2) filing a second application also containing subject matter not cumulatively disclosed in the four priority applications and claims whose limitations are **not** cumulatively disclosed in the four priority applications (claims corresponding to claims 1 through 18, 20 through 23, and 26 through 57) and **not** claiming the benefit of any of the four priority applications in the second application,[7] which would have allowed petitioners to file a redacted copy of the application for publication in compliance with 35 U.S.C. § 122(b)(2)(B)(v) and 37 CFR 1.217 within sixteen months of the filing date (or possibly even a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and 37 CFR 1.213(a) on filing) in the second application. It was petitioners' decision to simply file a single application containing claims that may find support in the four priority applications as well as claims that find no support in the four priority applications, rather than any action or inaction by the USPTO, that has resulted in the situation in which petitioners are now unable to rely upon

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[6] Petitioners' arguments concerning what would have been published and when had petitioners chosen to simply enter the national stage in the international applications at the thirty-month time period set forth in 37 CFR 1.495(b) are immaterial. The above-identified application was filed on April 18, 2001, it claims the benefit of *inter alia*, an application filed on November 4, 1999, and it does not fall within any of the exceptions to eighteen-month publication set forth in 35 U.S.C. § 122(b)(2). Therefore, 35 U.S.C. § 122(b)(1) provides that the USPTO is to publish the above-identified application promptly after eighteen months from November 4, 1999 (as soon as practical as that period has already expired) in accordance with the USPTO's established eighteen-month publication procedures.

[7] Since the marked-up copy of the application showing the redactions in brackets shows claims 1 through 18, 20 through 23, and 26 through 57 enclosed in brackets in their entirely, the four priority applications must not provide support for any limitation contained in these claims (much less every limitation contained in these claims). See Studiengesellschaft Kohle m.b.H. v. Shell Oil Co., 112 F.3d 1561, 1564, 42 USPQ2d 1674, 1677 (Fed. Cir. 1997) (a claim is entitled to the benefit of an earlier-filed application only if the earlier-filed application contain a disclosure which provides support under 35 U.S.C. § 112, ¶ 1, for the claim).

the provisions of 35 U.S.C. § 122(b)(2)(B)(v) and 37 CFR 1.217 to avoid publication of the subject matter not also contained in any of the four priority applications.[8]

Finally, that the assignee of the above-identified application is particularly sensitive to the disclosure of proprietary technology and desires to maintain it in confidentiality for as long as possible is not an extraordinary situation in which justice requires a waiver of any requirement of the rules of practice. Many independent inventors and small entities are sensitive to the disclosure of proprietary technology and desire to maintain it in confidentiality until a patent is granted (*i.e.*, the situation at issue is the usual situation, not an extraordinary situation). See Changes to Implement Eighteen-Month Publication of Patent Applications, 65 Fed. Reg. at 57045, 1239 Off. Gaz. Pat. Office at 82 (comment 45 and response). The exception provisions set forth in 35 U.S.C. § 122(b)(2)(B) represent the balance struck by Congress between the desires of independent inventors, small entities and others seeking patent protection to maintain their inventions in confidence until a patent is granted and the benefits to the public resulting from an earlier disclosure of the technology. See id. It is not the USPTO's place to upset this carefully drawn balance by expanding upon the provisions of 35 U.S.C. § 122(b)(2)(B)(v) on an ad hoc basis because an applicant considers him or herself to be particularly sensitive to the disclosure of proprietary technology.

CONCLUSION

For the above-stated reasons, the petition under 37 CFR 1.183 to waive the requirement in 37 CFR 1.217(a) that a redacted copy of an application be filed within sixteen months after the earliest filing date for which a benefit is sought under title 35, and publish only a redacted copy of the above-identified application under 37 CFR 1.217 is **denied**. Therefore, the USPTO will publish the above-identified application in accordance with 37 CFR 1.215. See 37 CFR 1.217(a).

This decision may be viewed as final agency action. See MPEP 1002.02(b).

Telephone inquiries regarding this decision should be directed to Robert W. Bahr at (703) 305-8850.

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[8] In addition. a redacted copy of the above-identified application was not filed until September 18, 2001, five months after the filing date of the above-identified application. There is no justification for the further delay until September 18, 2001 in filing a redacted copy of the above-identified application.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Stephen G. Kunin
Deputy Commissioner
for Patent Examination Policy

rwb

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Paper No. 19

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Kazunaga Suzuki	:	
Application No. 09/836,284	:	
Filed: April 18, 2001	:	
Attorney Docket No. Q64167	:	

This is a decision on the petition, filed March 9, 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 December 23, 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) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 2853 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

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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).

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)
6591487	2003-07-15	09836294	2001-04-18	3107-065

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	/Bruce H. Troxell/	Date (YYYY-MM-DD)	2007-11-03
Name	Bruce H. Troxell	Registration Number	26592

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. 6591487
Issue Date: July 15,2003
Application No. 09836294
Filed: April 18,2001
Attorney Docket No. BHT-3107-65

:

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

:

This is a decision on the electronic petition, filed November 3,2007 ,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 November 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.

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. 8

Schwegman Lundberg Woessner & Kluth
PO Box 2938
Minneapolis, MN 55402

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OFFICE OF PETITIONS

In re Application of
Veilleux, R. et al.
Application No. 09/836,310
Filed: April 17, 2001
Attorney Docket No. 186.011US1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 30, 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 April 24, 2002, which set a shortened statutory period for reply of three months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the above-identified application became abandoned on July 25, 2002.

The application file is being forwarded to Technology Center AU 3635 for further processing.

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

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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SCHWEGMAN, LUNDBERG & WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402

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OFFICE OF PETITIONS

In re Application of Veilleux et al. :
Application No. 09/836,310 : Decision on Petition
Filing Date: April 17, 2001 :
Attorney Docket No. 186.011US1 :

This is a decision on the petition under 37 CFR 1.181, filed March 13, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

Facts:

A Notice of Non-Compliant Amendment was mailed on June 24, 2005.

Petitioner states a discussion was held with the examiner on Monday, July 25, 2005. Petitioner states the examiner admitted the Notice of Non-Complaint Amendment was mailed in error.

Petitioner has supplied a letter from the examiner which states, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake." The letter from the Examiner was not scanned into the electronic image file wrapper. The file wrapper also does not include an interview summary.

Petitioner has supplied a copy of a "Response to Notice of Non-Compliant Amendment" filed by facsimile transmission on July 25, 2005. The image file wrapper does not contain a copy of the Response because the facsimile transmission was sent to an incorrect facsimile transmission number[1] or for other reasons.

The Response filed on July 25, 2005, stated the examiner had stated the Notice was mailed in error over the telephone and had sent a letter stating, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake."

The image file wrapper was reviewed on or before January 13, 2006. The reviewer failed to recognize the examiner had sent a letter effectively vacating the Notice of Non-Compliant amendment. As a result, a Notice of Abandonment was mailed on January 13, 2006.

---

[1] *See Centralized Delivery and Facsimile Transmission Requirements for Patent Application Related Correspondence*, 1275 Off. Gaz. Pat. Office 200 (Oct. 28, 2003) and *New Patents Central FAX Number and Updated Lists of Exceptions to the Centralized Delivery and Facsimile Transmission Policy for Patent Related Correspondence* 296 Off. Gaz. Pat. Office 76 (July 12, 2005).

Discussion:

Petitioner was responsible for filing a proper reply to the Notice of Non-Compliant Amendment unless the examiner vacated the Notice.

On or before July 25, 2005, the examiner sent a letter stating, "the Non-Compliant Notice ... mailed on 6/24/2005 was a mistake." The letter will be treated as a paper vacating the Notice of Non-Complaint Amendment. Therefore, the application is not abandoned.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 3635 will be informed of the instant decision and the examiner will mail a new Office action in response to the amendment filed on April 4, 2005, in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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

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FINNEGAN, HENDERSON, FARABOW, GARRETT AND DUNNER, LLP

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
1300 I Street, NW
Washington, D.C. 20005-3315

In re Application of
CHANTELOUP, Luc et al
Application No.: 09/065,041
PCT No.: PCT/FR96/01676
Int. Filing Date: 25 October 1996
Priority Date Claimed: 27 October 1995
Attorney Docket No.: 03806.0424
For: INTERMEDIARY COMPOUNDS FOR THE HEMISYNTHESIS OF ...

DECISION ON

RENEWED REQUEST

UNDER 37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition Under 37 CFR §1.47(a)" filed 29 March 1999, requesting that the above-captioned application be allowed without the signature of one of the inventors, Jean-Pierre Robin.

BACKGROUND

On 28 January 1999, applicants were notified that their "Petition Filed Pursuant to 37 C.F.R. §1.47(a)" was dismissed because the petition did not set forth evidence that Mr. Le Pennec had any firsthand knowledge of the facts declared, nor does it demonstrate that Mr. Robin was presented with a complete copy of the application papers.

On 22 January 1999, applicants filed the instant renewed petition which was accompanied by, *inter alia*, a declaration by Francoise Grenet, Director of Sériparm S.A., Technopole Université.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the requisite petition fee required by 37 CFR 1.17(i); (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known

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address of the missing joint inventor; and (4) an oath or declaration executed by each of the signing joint inventors on their behalf and on behalf of the non-signing joint inventor(s). Applicants had previously satisfied items (1), (3) and (4) with their first petition.

Section 409.03(d), *Proof of Unavailability or Refusal*, of the Manual for Patent Examining Procedure states, in part:

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. . . .
>
> When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. . . .
>
> When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. . . . Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

Regarding item (2), in the renewed petition, Mr. Grenet, the Director of Sérípharm S.A., Technopole Université claims that he "received the application papers, including the specification, Declaration and Power of Attorney, and Assignment, from Rhône-Poulenc Rohrer S.A. for signing by the named inventors." Grenet Decl. ¶ 6. Later, Mr. Grenet states that at a meeting with Mr. Robin, "I requested that he sign the application papers. Mr. Robin reviewed the application papers and informed me that he had made up his mind not to sign the application papers. Mr. Robin explained to me that his refusal was because of complex business difficulties between his company, Paclipharm, and Sérípharm . . ." Grenet Decl. ¶ 9.

The declaration of Mr. Grenet lists all the facts and circumstances of Mr. Robin's refusal to sign the application and his reasons for the refusal. It also claims that Mr. Robin was presented with a complete copy of the application papers to review. Applicants' evidence satisfies item (2).

Accordingly, all requirements under 37 CFR 1.47(a) have been satisfied.

CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. § 371(c).

The application has an international filing date of 25 October 1996 under 35 U.S.C. 363, and a 35 U.S.C. 102(e) and 371(c) date of **27 April 1998**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record and will be published in the Official Gazette.

This application is being forwarded to the DO/EO/US for continued processing including issuance of a NOTIFICATION OF ACCEPTANCE (Form PCT/DO/EO/903) and filing receipt.

Richard Cole
PCT Legal Examiner
PCT Legal Office

James Thomson
Petitions Attorney
PCT Legal Office

Tel: (703) 308-6457
Fax: (703) 308-6459

JT/RC:jt

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. 6

PILLSBURY WINTHROP
725 S. FIGUEROA STREET
SUITE 2800
LOS ANGELES, CA 90017

COPY MAILED
JUN 0 2 2004
OFFICE OF PETITIONS

In re Application of	:	
Dhananjay A. Nagalkar	:	
Application No. 09/836,331	:	ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. P 275029 P 10780	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 24, 2004, 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 28, 2003, 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 29, 2003.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

The application file is being forwarded to ~~Publishing Division.~~

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 11-01

Paper No. 5

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
555 13TH STREET, N.W.
SUITE 701, EAST TOWER
WASHINGTON, DC 20004

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DEC 2 0 2001

OFFICE OF PETITIONS

In re Application of	:	
William A. Koehring	:	
Application No. 09/836,347	:	DECISION REFUSING STATUS
Filed: 18 April, 2001	:	
Attorney Docket No. N1239-008	:	

This is a decision on the petition filed on 6 November, 2001, under 37 CFR 1.47(a) and 1.48, which is being treated as (1) a petition under 37 CFR 1.48(a) to amend the inventive entity by the addition of Steven S. Crafton (Crafton) and W. Ken Russell (Russell), (2) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(2) which requires a statement from a person being added (Russell), (3) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.63 and 1.67, which require that a named inventor execute a supplemental declaration, and 4) as authorized by 37 CFR 1.48(a)(3), a petition under 37 CFR 1.47(a) to accept the declaration filed 6 November, 2001, which lacks the signature of Russell.

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. **FAILURE TO TIMELY RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petitions Under 37 CFR 1.48, 1.183, and 1.47."

The above-identified application was filed on 18 April, 2001, with an executed declaration naming William A. Koehring as the sole inventor.

On 6 November, 2001, the present petition was filed, whereby petitioners request that Russell and Crafton be added as a named inventor. Petitioners also request waiver of the rules in that Russell refuses to sign the declaration and the statement of lack of deceptive intent as required by 37 CFR 1.48.

As 37 CFR 1.48(a) requires any inventor being added to sign a statement of lack of deceptive intent and the oath or declaration, this petition is properly treated as a request for a waiver under 37 CFR 1.183.

Petition Under 37 CFR 1.183 to waive 37 CFR 1.48(a).

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by: (1) a petition including a statement from each person being added that the addition is necessitated by amendment of the claims and that the inventorship 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 assignee, if any of the originally named inventors has executed an assignment; and (5) if the application is involved in an interference, the amendment to add claims must be accompanied by a motion under 37 CFR 1.634.

The present petition lacks item (4).

In response to item (4), petitioners have not provided proof of authority of the person who has signed the statement of consent by the assignee. The statement is signed by Ron Bell, the Director of Corn Research, Ag Reliant Genetics, LLC. The statement must be signed by an officer of the assignee company (president, vice president, secretary, or treasurer), or, if the statement is not signed by an officer of the company, then proof of authority of the person signing on behalf of the company must be submitted. As Mr. Bell is not a corporate officer, petitioners must submit proof of his authority to sign on behalf of the assignee.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703)308-6918.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 05-02

Paper No. 5

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
555 13TH STREET, N.W.
SUITE 701, EAST TOWER
WASHINGTON, DC 20004

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OFFICE OF PETITIONS

In re Application of
Koehring, Russell, and Crafton
Application No. 09/836,347
Filed: 18 April, 2001
Attorney Docket No. N1239-008

DECISION ACCORDING STATUS

This is a decision on the renewed petition filed on 1 February, 2002, under 37 CFR 1.47(a) and 1.48, which is being treated as (1) a petition under 37 CFR 1.48(a) to amend the inventive entity by the addition of Steven S. Crafton (Crafton) and W. Ken Russell (Russell), (2) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(2) which requires a statement from a person being added (Russell), (3) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.63 and 1.67, which require that a named inventor execute a supplemental declaration, and 4) as authorized by 37 CFR 1.48(a)(3), a petition under 37 CFR 1.47(a) to accept the declaration filed 6 November, 2001, which lacks the signature of Russell.

The petition is granted.

Petitioners have shown that a letter sent to the last known address of non-signing joint inventor Russell was returned as undeliverable by the U.S. Postal Service. Additionally, petitioners have presented a letter from joint inventor Russell's attorney, Barry A. Russell, stating joint inventor Russell's refusal to sign "any patent documents or filings relating to" the present application. As such, petitioners have shown that joint inventor Russell could not be reached to sign a declaration under 37 CFR 1.63 naming him as a joint inventor along with joint inventors William A. Koehring and Steven S. Crafton or the statement of lack of deceptive intent required by 37 CFR 1.48.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the declaration. Notice of the filing of this application will also be published in the Official Gazette.

Additionally, as a result of papers filed on 21 and 22 January and 7 February, 2002, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a)(2). The inventorship of this application has been changed by the addition of W. Ken Russell, Lincoln, Nebraska, and Steven S. Crafton, Westfield, Indiana.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected. Thereafter, the application will be forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703)308-6918.

D Wood

Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Beverly M. Flanagan

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
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ALEXANDRIA, VA 22313-1450
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Paper No. None

Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati OH 45202

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MAR 0 4 2004

OFFICE OF PETITIONS

In re Application of
Robert L. Gendron et al.
Application No. 09/836,410
Filed: April 17, 2001
Title: INHIBITION OF BONE TUMOR FORMATION USING ANTISENSE CDNA THERAPY

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b)[1], filed December 15, 2003, to revive the above-identified application.

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 April 11, 2003, which set a shortened statutory period for reply of three (3) months. On September 16, 2003, a three-month extension of time under the provisions of 37 CFR §1.136(a) was received, but an amendment did not accompany the submission. Accordingly, the above-identified application became abandoned on October 12, 2003. A Notice of Abandonment was mailed on December 11, 2003

With 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 filing of an after-final amendment which has been considered by the Examiner and has been deemed to place the application in condition for allowance, the payment of the petition fee, and the proper statement of unintentional delay.

1 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.

As such, the petition is **GRANTED**.

The application file is being forwarded to Technology Center 1600 for further processing of the amendment filed concurrently with this petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Attorney
Office of Petitions
United States Patent 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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Paper No. 18

SNELL & WILMER LLP
ONE ARIZONA CENTER
400 E. VAN BUREN STREET
PHOENIZ, AZ 85004-2002

COPY MAILED

OCT 20 2005

OFFICE OF PETITIONS

In re Application of	:	
Tim Dyer	:	
Application No. 09/836,426	:	
Filed: April 17, 2001	:	ON PETITION
Attorney Docket No.:	:	
35013.4000	:	

This is a decision on three Petitions filed August 17, 2005. The first petition is to Withdraw the Holding of Abandonment of the application and is properly treated under 37 CFR 1.181. The second petition is for revival of an application abandoned unavoidably and is properly treated under 37 CFR 1.137(a). The third petition is for revival of an application abandoned unintentionally and is properly treated under 37 CFR 1.137(b).

The petition under 37 CFR 1.181 is dismissed as inappropriate.
The petition under 37 CFR 1.137(a) is dismissed.
The petition under 37 CFR 1.137(b) is granted.

Background:

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed July 15, 2003. The Office action set a three (3) month period for reply.

Applicant filed a response to the Office action in the form of a Notice of Appeal and an Amendment on October 20, 2003. In response, this Office mailed an Advisory Action on October 31, 2003, informing applicant that the Amendment would be entered, and that the period to file an appeal brief was as set forth in 37 CFR 1.192(a)[1].

[1] Now 37 CFR 41.37

No appeal brief having been filed, the appeal was dismissed, and the application became abandoned for failure to timely and properly reply to the final Office action, mailed July 15, 2003. A Notice of Abandonment was mailed June 16, 2005.

The instant petitions

Applicant files the instant petitions and argues that the abandonment should be withdrawn, or held to be unavoidable, or in the alternative unintentional because Applicant was awaiting a new, non-final Office action from the Examiner. Applicant avers that in December 2003 she discussed the case with the Examiner, that she thereafter followed up with several voice mail messages for the Examiner, and on June 14, 2004, the Examiner left a voice mail for Applicant, stating that the Examiner would issue a new, non-final Office action. Applicant provides that after receiving the voice mail message from the Examiner, she continued to follow-up with the Examiner by leaving a voice mail message, only to receive the Notice of Abandonment.

Petition to Withdraw Holding of Abandonment

The MPEP provides that

> [a] petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

MPEP 711.03(c)I

Here, Applicant does not argue as to the sufficiency of the reply, or as to controlling dates, but her contentions involve the cause of abandonment, i.e., that the Examiner said a new, non-final Office action would be forthcoming, and Applicant relied upon this assertion and awaited the new, non-final Office action. Accordingly, a petition to withdraw the holding of abandonment under 37 CFR 1.181 is inappropriate, and a petition under 37 CFR 1.137 is necessary to revive the application.

The Petition Under 37 CFR 1.137(a)

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), which may met by the filing of a notice of appeal and the requisite fee; a Request for Continued Examination; 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 USC 120, 121 and 365(c); (**2**) the petition fee as set forth in 37 CFR 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 37 CFR 1.137(a) was unavoidable; and (**4**) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Applicant lacks item (3) as set forth above.

Applicable Law

The general standard applied by the Office requires petitioner to establish that petitioner treated the patent the same as a reasonable and prudent person would treat his or her most important business.[2] 35 U.S.C. 41(c)(1) states, "The Commissioner may accept the payment of any maintenance fee ... at any time ... if the delay is shown *to the satisfaction of the Commissioner* to have been unavoidable." (emphasis added).

[2] 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. His interpretation of those provisions is entitled to considerable deference." 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, 1425, 7 U.S.P.Q.2d (BNA) 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defense 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.")).

"The critical phrase 'unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable' has remained unchanged since first enacted in 1861." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The standard for "unavoidable" delay for reinstating a patent is the same as the unavoidable standard for reviving an application. See Ray v. Lehman, 55 F.3d 606, 608-609, 34 U.S.P.Q.2d (BNA) 1786, 1787 (Fed. Cir. 1995) (citing In re patent No. 4,409,763, 7 U.S.P.Q.2d (BNA) 1798, 1800 (Comm'r Pat. 1990; Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (D.C. Cir. 1982). The court in In re Mattullath, accepted the standard which had been proposed by Commissioner Hall which "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, 514-515 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)). However, "The question of whether an applicant's delay in prosecuting an application was unavoidable [will] be decided on a case-by-case basis, taking all of the facts and circumstances into account."[3] Nonawareness of the content of, or a misunderstanding of, PTO statutes, PTO

[3] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (1982).

rules, the MPEP, or Official Gazette notices, does not constitute unavoidable delay.[4] The statute requires a "showing" by petitioner. Therefore, petitioner has the burden of proof. The decision will be based solely on the written, administrative record in existence. It is not enough that the delay was unavoidable; petitioner must prove that the delay was unavoidable. A petition will not be granted if petitioner provides insufficient evidence to "show" that the delay was unavoidable.

Applicant is further advised that the Patent and Trademark Office must rely on the actions or inactions of duly authorized and voluntarily chosen representatives of the applicant, and applicant is bound by the consequences of those actions or inactions. Link v. Wabash, 370 U.S. 626, 633-34 (1962); Huston v. Ladner, 973 F.2d 1564, 1567, 23 USPQ2d 1910, 1913 (Fed. Cir. 1992); see also Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (D.N. Ind. 1987). Specifically, petitioner's delay caused by the actions or inactions of his voluntarily chosen representative does not constitute unavoidable delay within the meaning of 35 U.S.C. 133 or 37 CFR 1.137(a). Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2d 1130 (D. Ind. 1987); 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 (Comm'r Pat. 1891). 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).

Applicant's Assertion

Applicant files the instant petition and provides that the Examiner informed Applicant via a voice mail message that a new,

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

non-final Office action would be forthcoming, and Applicant relied upon this assertion and awaited the new, non-final Office action, and took no further action in this case. Petition at p.2.

As to item (3), Applicant has failed to demonstrate that the delay in responding to the final Office action was unavoidable.

Regarding petitioner's argument, that the application became abandoned because Applicant relied upon the Examiner's statement that another Office action would be issued, and therefore Applicant took no further action in the case, Applicant is directed to 37 CFR 1.135(b), Abandonment For Failure to Reply Within Time Period, which reads:

> Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

This section is further clarified in the MEPE, which provides

> [f]or example, as 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal, a delay is not "unavoidable" when the applicant simply permits the maximum extendable statutory period for reply to a final Office action to expire while awaiting a notice of allowance or other action.

This section explains that a delay is not unavoidable when the applicant is awaiting an action from the examiner. In other words, when Applicant filed the response to the final Office action, it was Applicants responsibility to file a complete and proper reply as the application required. The Advisory Action was a courtesy mailed to Applicant, which attempted to notify Applicant that the filed response failed to comply with what was required. The time to file a complete and proper reply

continued to run from the mailing of the Office action on July 15, 2003.

Finally, the MPEP cautions that

> a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

Petition Under 37 CFR 1.137(b)

With the instant petition, Applicant has filed a Request for Continued Examination ("RCE") and a submission in the form of an Amendment.

Having found that all of the requirements for a grantable petition under 37 CFR 1.137(b) have been met, **this petition is hereby granted.**

The Petition fees, $500 and $1500, and the RCE filing fee, $790.00, have been charged to deposit account 19-2814 as authorized in the instant petition(s).

This application is being returned to Technology Center 3723 for processing of the RCE and Amendment in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
De Bizemont et al.	:	
Application No. 09/836,439	:	ON PETITION
Filed: April 17, 2001	:	
Attorney Docket No. 017753-000154	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 7, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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 continuing application No. 10/965,905.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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JUN 29 2005

OFFICE OF PETITIONS

In re Application of	:
Alexander Walland et al	:
Application No. 09/836,462	: DECISION GRANTING PETITION
Filed: April 18, 2001	: UNDER 37 CFR 1.181
Attorney Docket No. 1/1152/1088	:

This is a decision on the petition under 37 CFR 1.137(b), filed February 10, 2005, which, for the reasons stated below, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the above-identified application.

The petition under 37 CFR 1.181 is **granted**.

The Notice of Abandonment mailed on December 16, 2004 stated that this application is abandoned for failure to timely reply to the February 11, 2004 Office action.[1]

Petitioner states that he was notified in a Notice of Improper Request for Continued Examination (RCE), dated February 11, 2004, that the RCE, filed on January 7, 2004 was improper since prosecution on the merits of the application had not closed. Petitioner further states that he believed no further action was necessary on his part in view of the statement contained in the Notice, which stated that, if the RCE was accompanied by a reply to a non-final Office action, then the reply would be entered and considered under 37 CFR 1.111. Therefore, petitioner is of the opinion that the holding of abandonment is improper as the examiner never responded to the amendment accompanying the RCE.

Petitioner is correct that the holding of abandonment is improper. In this regard, a reply was timely received with the improper RCE (along with a one month extension of time fee) and should have been considered pursuant to the provisions of 37 CFR 1.111, as stated in the Notice.

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[1] The Notice of Abandonment incorrectly states that this application is abandoned for failure to timely reply to the February 11, 2004 Office action, as this Notice did not set a period for reply, other than to indicate that the period for reply continues to run from the last Office action, which is the non-final Office action of September 12, 2003.

In view of the above, the holding of abandonment is hereby withdrawn and the application restored to pending status.

A petition treated as one to withdraw the holding of abandonment under 37 CFR 1.181 does not require payment of a fee therefor. Accordingly, no fee has been assessed to petitioner's deposit account for this petition. Further, as the RCE filed on January 7, 2004 was improper, the $770 fee submitted therefor is unnecessary and will be credited to petitioner's deposit account in due course.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 1625 for appropriate action on the reply received January 7, 2004.

Frances Hicks
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 7

PFIZER, INC.
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APR 0 9 2002

OFFICE OF PETITIONS

In re Application of :
Leung, et al. :
Application No. 09/836,474 : ON PETITION
Filed: April 18, 2001 :
Attorney Docket No. 845.27,700 :
For: FAST DISSOLVING ORALLY :
CONSUMABLE FILMS :

This is a decision on the petition under 37 CFR 1.137(b), filed March 29, 2002, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned September 21, 2001 for failure to timely file a proper response to the non-final Office action mailed June 20, 2001. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 CFR 1.136(a) were timely obtained. Notice of Abandonment was mailed February 11, 2002.

This application will be forwarded to Technology Center 1600 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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)
6652158	2003-11-25	09836500	2001-04-17	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

◉ The assignee of record of the entire interest

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	/Meir Bartur/	Date (YYYY-MM-DD)	2008-03-21
Name	Meir Bartur CEO Optical Zonu Corp.		
Enter Reel and Frame Number		Remove	
Reel Number	014069	Frame Number	0353
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.

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In re Patent No. 6652158
Issue Date: November 25,2003
Application No. 09836500
Filed: April 17,2001
Attorney Docket No. ZON1.PAU.06

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

This is a decision on the electronic petition, filed March 21,2008 ,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 March 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
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Linda E. Horner
Sterne, Kessler, Goldstein & Fox PLLC
1100 New York Avenue, N.W.
Washington D.C. 20005

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AUG 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Ryan C. Kinter et al.	:	
Application No. 09/836,541	:	DECISION ON PETITION
Filed: April 18, 2001	:	TO WITHDRAW
Attorney Docket No. 1778.0200000(00128.00US)	:	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 June 8, 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 Linda E. Horner.

Linda E. Horner has been withdrawn as attorney or agents of record; all other attorneys remain of record.

The correspondence address of record remains unchanged.

There is no outstanding Office action at this time.

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

David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 12

GREENLEE WINNER AND SULLIVAN P C
5370 MANHATTAN CIRCLE
SUITE 201
BOULDER CO 80303

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OFFICE OF PETITIONS

In re Application of Seed, Allen, Aruffo, Camerini, Lauffer, Oquendo, Simmons, Stamenkovic, Stengelin, and Amiot Application No. 09/836,544 Filed: 17 April, 2001 Attorney Docket No. 11-88L	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition filed under 37 CFR 1.47(a) on 3 December, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 17 April, 2001, without an executed oath or declaration.

Accordingly, on 19 July, 2001, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring the statutory basic filing fee, additional claim fee(s), an executed oath or declaration, and a surcharge for their late filing. A two (2)-month period for reply was set.

In response, on 3 December, 2001 (certificate of mailing date 19 November, 2001), the present petition was filed, accompanied by the statutory basic filing fee, additional claim fee(s), the petition fee and surcharge, and a declaration naming Brian Seed, Janet Allen, Alejandro Aruffo, David Camerini, Leander Lauffer, Carmen Oquendo, David Simmons, Ivan Stamenkovic, Siegfried Stengelin, and Martine Amiot as joint inventors and signed by all joint inventors except Stamenkovic on behalf of themselves and joint inventor Stamenkovic.

Petitioners state that the non-signing inventor cannot be located. Specifically, petitioners' counsel states that counsel was informed by joint inventor Seed that Stamenkovic has "returned to Europe without providing a forwarding address."

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1), (2), and (5). In regards to item (1), petitioners have not provided proof that diligent efforts have been made to locate the non-signing inventor.[1] Petitioners state that joint inventor Stamenkovic is believed to now be in Europe, however no showing has been provided of any efforts to contact him there. The showing of record is that a single mailing was made to Stamenkovic's US mailing address. Obviously, if Stamenkovic is no longer in the US he cannot be reached at a US mailing address.

Petitioners must present a showing that diligent efforts have been made to locate the non-signing inventor.[2] The showing of record is insufficient to prove that diligent efforts were made

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[1] MPEP 409.03(d).

[2] MPEP 409.03(d).

to locate the non-signing inventor. Petitioner should explain what attempts were made to obtain a forwarding address and to locate the inventor through other means. If attempts to obtain a forwarding address and to locate the inventor by other means (e.g. though e-mail, telephone, national registry) continue to fail, then applicant will have established that the inventor cannot be reached. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having *first hand* knowledge of the details. The specific dates and times that the application was mailed and other attempts, such as telephone calls or e-mail searches, were made should be included.

Petitioners must show proof that a copy of the application (specification including claims, drawings, if any, and the Declaration) were sent or given to the non-signing inventor for review.[3] Petitioners should provide a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

In the event that the application is returned as undeliverable by the post office, petitioners should provide a copy of the envelope showing that the application sent to the last known address of the non-signing inventor was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details.

In the event that the non-signing inventor refuses to sign the declaration, petitioners must present proof thereof. If there is a written refusal, a copy of the written refusal should be submitted with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (2), the declaration filed on 3 December, 2001, is defective because the citizenship is not included for joint inventors Allen, Camerini, Lauffer, Oquendo, Simmons, Stamenkovic, Stengelin, and Amiot.[4] A statement of the inventor's citizenship is a statutory requirement and cannot be

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[3]MPEP 409.03(d).

[4]MPEP 605.01.

waived.[5] Additionally the declaration contains is defective in that it contains non initialed and/or non-dated alterations.[6] Specifically, there are unsigned or undated changes for joint inventors Lauffer and Oquendo. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by all of the signing inventors on behalf of themselves and the non-signing inventor must be submitted with a renewed petition.

With regards to item (5) petitioners should verify the last known address for the non-signing inventor. If a different last known address is found, petitioners must state the last known address in any renewed petition.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[5] 35 U.S.C. § 115, MPEP 605.01.

[6] See 37 CFR 1.52(c).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DIW 08-02

Paper No. 18

GREENLEE WINNER AND SULLIVAN P C
5370 MANHATTAN CIRCLE
SUITE 201
BOULDER CO 80303

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AUG 1 4 2002

OFFICE OF PETITIONS

In re Application of Seed, Allen, Aruffo, Camerini, Lauffer, Oquendo, Simmons, Stamenkovic, Stengelin, and Amiot Application No. 09/836,544 Filed: 17 April, 2001 Attorney Docket No. 11-88L	DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(a) MOOT

Papers filed on 2 May, 2002, in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on 19 March, 2002, included a Declaration signed by the previously nonsigning inventor, Iven Stamenkovic as well as a supplemental declaration by joint inventors Allen, Camerini, Lauffer, Oquendo, Simmons, Stengelin, and Amiot correctly identifying their citizenship, mailing address, and residence.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is moot; this application does not have any Rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47(a).

This application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at (703)308-6918.

DIWood

Douglas I. Wood
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
P.O. Box 1450
Alexandria, VA 22313-1450
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STERNE, KESSLER, GOLDSTEIN & FOX
1100 NEW YORK AVENUE, NW
WASHINGTON DC 20005

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SEP 26 2005

OFFICE OF PETITIONS

In re Patent No. 6,861,419 :
Issue Date: March 1, 2005 :
Application No. 09/836,548 :
Filed: April 18, 2001 :
Attorney Docket No. 1735.0450001/RWE/BEC :

ON PETITION

This is a decision on the petition filed April 11, 2005, which is being treated as a petition under 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 matter is being referred 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FEB 24 2004

#16

BARNES & THORNBURG
11 SOUTH MERIDIAN STREET
INDIANAPOLIS, IN 46204

In re Application of	:
Jason Scott Sawyer et al	:
Serial No.: 09/836,567	: PETITION DECISION
Filed: April 17, 2001	:
Attorney Docket No.: 3051-67789	:

This is in response to the petition under 37 CFR 1.181, filed July 11, 2003, to clarify the record of the above identified application. The delay in acting on this petition is regretted.

A review of the file history shows that this application was filed with an unsigned declaration naming three inventors. The transmittal letter further confirms the names of the three inventors. A Notice of Missing Parts was mailed to applicants requiring submission of a signed oath or declaration. In reply applicants submitted a copy of a declaration from a parent application naming six inventors, only three of which had signed the declaration. By submission of the declaration naming six inventors the inventorship of this application was automatically changed to the six named inventors. In consequence of the partially signed declaration, a second Notice of Missing Parts should have been sent to applicants. However this was not done and the application proceeded to examination. Subsequent to the mailing of a Notice of Allowance and Issue Fee Due and Notice of Allowability, Publications Division returned the application to the examiner noting that the declaration was not signed by all named inventors. As a consequence of this the application has been held abandoned although it appears that a Notice of Abandonment has not been mailed out.

Applicants explanation of the inventorship discrepancy is not satisfactory. It is clear that this application was filed in the name of three inventors with a properly prepared, but unsigned, declaration being submitted to the Office. The transmittal papers in part 4D do not indicate the deletion of any inventors from the parent application nor any statement attesting thereto which should have accompanied the application. The subsequent submission of a partially signed declaration naming more than the listed three inventors was error on applicants' part. Either a fully signed declaration of all six inventors should have been filed with a petition to delete three of the inventors as not having made the invention now being claimed or the newly prepared declaration which listed only three inventors should have been submitted with the inventors signature.

In view of the above circumstances, the inventorship of this application is not clear and applicants failure to properly correct the inventorship has caused this application to become abandoned. A properly executed declaration has yet to be filed. In view of this lack, the request that this petition alternatively be considered under 37 CFR 1.137(b) can not be accorded. Further, such a petition should be submitted as a separate paper.

The petition is **DENIED**.

The application will be forwarded to for storage.

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.

John Doll
Director, Technology Center 1600

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Paper No. 19

BARNES & THORNBURG
11 SOUTH MERIDIAN STREET
INDIANAPOLIS, IN 46204

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SEP 22 2004

OFFICE OF PETITIONS

In re Application of	:
Jason Scott Sawyer et al	:DECISION ON PETITION TO
Application No. 09/836,567	:REVIVE AND DECISION
Filed: April 17, 2001	:REFUSING STATUS UNDER
Attorney Docket No. 3051-67789	:37 CFR 1.47(a)

This is a decision on the petitions under 37 CFR 1.137(b) to revive the above-identified application and on the petition under 37 CFR 1.47(a) filed April 29, 2004.

The petitions are dismissed.

Any request for reconsideration must be submitted within TWO MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any reply should be entitled "Renewed Petitions under 37 CFR 1.137(b) and 37 CFR 1.47(a)" and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. This is **not** a final agency action within the meaning of 5 U.S.C. §704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b)) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.17(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) since the application cannot be revived until such time as a grantable petition under 37 CFR 1.47(a) has been received.

The above-identified application was filed on April 17, 2001, with an unexecuted declaration naming Jason Scott Sawyer, Stephen M. Spaethe, and James Jacob Starling as the inventors.

On May 9, 2001, a Notice to File Missing Parts of Nonprovisional Application (Notice) was mailed setting a two month extendible period for supplying an executed oath or declaration, a $130 surcharge fee for its late filing, and an abstract.

In reply, applicants, on July 9, 2001, supplied an abstract, and on July 30, 2001, submitted an executed declaration for inventors Jason Scott Sawyer, Stephen M. Spaethe, and James Jacob Starling. The July 30, 2001 declaration also named Gabriele Jedlitschky, Inka Leier, and Dietrich Keppler, whose signatures were not supplied at the time of filing. The $130 surcharge fee was also received on July 30, 2001.

Thereafter, this application was processed as complete, despite the missing signatures of the above-named inventors, and sent to the Technology Center for prosecution where, after the mailing of a nonfinal and final Office action, the application was finally allowed on October 22, 2002. Although not of record to date, it appears that, rather than paying the issue fee, a Request for Continued Examination (RCE) was filed on January 28, 2003.

On July 14, 2003, a "Petition under 37 C.F.R. § 1.181" was filed to clarify the record regarding the inventorship and status of the application.

On February 24, 2004, the Director of Technology Center 1600 replied, stating that this application is abandoned for failure to supply the signatures of all six named inventors, as shown on the first submitted executed declaration of July 30, 2001, within the time period as required by the Notice of May 9, 2001. The decision further stated that, as the declaration was executed by three of the six named inventors, this set the inventive entity. *Note* 37 CFR 1.48(f).

On April 29, 2004, a petition to revive under 37 CFR 1.137(b) and a petition under 37 CFR 1.47(a) was filed setting forth the facts surrounding the attempts to obtain the signature on a declaration from the legal representative of deceased inventor Stephen M. Spaethe. The petition is also accompanied by a declaration naming inventors Jason Scott Sawyer, James Jacob Starling, and Stephen M. Spaethe, but only signed by the first two inventors as inventor Stephen M. Spaethe is now deceased.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), it is inconsistent for petitioner to seek Rule 47 status, where six inventors were named on the declaration but only three signed. **In this regard, petitioner must submit a petition under 37 CFR 1.48(a) to correct the inventive entity. There is no indication to date that a petition under 37 CFR 1.48(a) has been submitted. Alternatively, petitioner may wish to file a continuing application with a request for deletion of the names of the inventors who are not the inventors. *Note* MPEP 201.03.**

Further, as to the 37 CFR 1.47(a) showing, there is no indication that a copy of the instant application was ever given to legal representative Lisa Spaethe. Rule 47 applicant must demonstrate with documented evidence that the legal representative refuses to join in the application after having been presented with the application papers (specification, claims, drawings and oath or declaration). There is no indication in the present case whether legal representative Lisa Spaethe was presented with a copy of the complete application papers for the instant nonprovisional application. If Mrs. Spaethe was not presented with a copy of the application papers for the instant nonprovisional application, then Mrs. Spaethe could not attest that she has "reviewed and understands the application papers" and could not execute the declaration she was requested to sign. Did legal representative Lisa Spaethe receive a copy of the application papers? Unless petitioner can show that a copy of the application papers was presented to Mrs. Spaethe, then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the last known address of Mrs. Spaethe, return receipt requested. A cover letter of instructions should accompany the mailing of the application papers setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. **The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegram, etc.** See MPEP 409.03(d).

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration **by the party to whom the refusal was made.** Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

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

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

By hand: Customer 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 decision should be directed to Wan Laymon at (703) 306-5685.[1]

Frances Hicks

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

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[1] Effective September 27, 2004, the phone number will be 571-272-3220.

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AUG 01 2007

TECHNOLOGY CENTER 2100

William J. Breen, III
Lee & Hayes, PLLC
421 W Riverside Avenue Suite 500
Spokane, WA 99201

In re Application of:
Christopher Mitchell, et al.
Application No. 09/836,584
Filed: April 16, 2001
For: Methods and Arrangements for Selectively Maintaining Parental Access Consent in a Network Environment

DECISION ON PETITION UNDER 37 C.F.R. § 1.136(b)

This is a decision on the petition filed May 12, 2006 under 37 CFR § 1.136(b) for granting a 2 month extension of time to file the May 12, 2006 Reply Brief.

A review of the record indicates that on January 12, 2006, an examiners answer was mailed out in response to an appeal brief filed October 28, 2005. On May 12, 2006 a reply brief was filed with a two month extension of time under 37 CFR § 1.136(a) and a statement on the first page of the reply brief that the extension of time as set forth in 37 CFR § 1.136(b). There appears to be some confusion over which statue the extension of time is being submitted under so both will be discussed. 37 CFR 41.41 clearly states that extensions of times under 37 CFR § 1.136(a) are not applicable under this section. 37 CFR 1.136(b) states that extensions of time under this section must be submitted before expiration of the running time period and include a reason as to why the response can not be filed within the time period running. In this application the time period was two months starting January 12, 2006, thus the petition was after the expiration of the time period and the petition included no rationale as to why a response could not be filed before expiration of the time period.

Therefore, the reply brief noted communication of April 18, 2007 is hereby vacated as the reply brief cannot be considered as was not submitted timely. The application is being forwarded to board of appeals and interferences for consideration of the merits.

Accordingly, the petition is **Dismissed.**

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272-3612.

Tod Swann
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and
Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 8

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OFFICE OF PETITIONS

DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
SUITE 3400
1420 FIFTH AVENUE
SEATTLE, WA 98101

In re Application of
Penney, et al.
Application No. 09/836,593
Filed: April 16, 2001
Attorney Docket No. 500794.01

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed May 14, 2003. The petition will also be treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181(a).

The petition under 37 CFR 1.181(a) is **granted**.

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

This application was held abandoned on August 22, 2001, because it was believed that no timely response was received to the "Notice to File Corrected Application Papers", mailed June 21, 2001, which set a period for reply of two months. Petitioner was advised of the above-cited application's abandonment by a Notice of Abandonment mailed April 28, 2003.

TREATMENT UNDER 37 CFR 1.181(a)

Petitioner maintains that a communication responsive to the "Notice to File Corrected Application Papers" was timely filed. A review of the application file did reveal "Supplemental Preliminary Amendment" filed on August 15, 2001, that petitioner indicated was intended to be responsive to the notice of June 21, 2001. Based on the facts as stated in the instant petition and the filing uncovered by the undersigned in reviewing the application file, it is concluded that the holding of abandonment was improperly imposed. The holding of abandonment is, therefore, withdrawn as of the mailing date of this decision.

TREATMENT UNDER 37 CFR 1.137(b)

As the holding of abandonment was withdrawn via the successful petition under 37 CFR 1.181(a), there is no other remedy that can be provided relative to the petition under 37 CFR 1.137(b). The petition under 37 CFR 1.137(b) is, therefore, moot.

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) 305-0010.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

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DEC 0 5 2002

OFFICE OF PETITIONS

Applicant: Kravtchenko et al.
Appl. No.: 09/836,600
Filing Date: April 18, 2001
Title: COMPOSITIONS FOR OXIDATION DYEING KERATINOUS FIBERS COMPRISING AT LEAST ONE OXIDATION PRECURSOR, AND AT LEAST ONE DIRECT DYE, AND DYEING METHODS
Attorney Docket No.: 5725.0883-00
Pub. No.: US 2002/0095732 A1
Pub. Date: July 25, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on September 24, 2002 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
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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SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1 1990)
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-0530

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OFFICE OF PETITIONS

In re Application	:
Venkatraman, et al.	:
Application No. 09/836,636	: DECISION ON APPLICATION
Filed: April 17, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. IN01155K	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)(b)", filed March 23, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred thirty-two (132) days to four hundred six (406) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein. However, applicants' request that an additional PTO delay of one hundred fifty-seven (157) days be assessed is being **HELD IN ABEYANCE** until after the actual patent date.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On March 10, 2004, 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 one hundred thirty-two (132) days. On March 23, 2004, applicants timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is four hundred six (406) days.

Applicants specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred thirty-two (132) days based on an adjustment for PTO delay of one hundred sixty-six (166) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(2), reduced by applicants' delay of thirty-four (34)days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). Applicants' delay of 34 days has been reviewed and found to be correct. The adjustment of one hundred sixty-six (166) days is at issue.

A review of the application file reveals that the Office mailed a Restriction Requirement on February 19, 2002. Applicants timely filed an Election on March 26, 2002. However, the Office mailed a Notice of Non-Complaint Amendment on April 10, 2002. Applicants filed a proper reply on April 29, 2002, and pursuant to 37 C.F.R. §1.704(c)(7), were properly assessed applicant delay of thirty-four (34) days.

Pursuant to 37 C.F.R. § 1.703(a)(2), the Office had four months, or until August 29, 2002, to mail either an action under 35 U.S.C. 132 or a Notice of Allowance. The Office mailed a "Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures" (hereinafter "Sequence Notice") on February 11, 2003, and was improperly assessed PTO delay of one hundred sixty-six (166) days. The Office has stated that a Sequence Notice is **not** an action under 35 U.S.C. 132.[2] The Office did not mail an action under 35 U.S.C. 132 until May 5, 2003. Accordingly, PTO delay should have been assessed as two hundred forty-nine (249) days, not one hundred sixty-six (166) days.

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[1] PALM records indicate that applicants paid the issue fee on March 31, 2004.

[2] See Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule, 1239 OG 14 (Oct. 3 2000).

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **two hundred fifteen (215) days** (249 days of PTO delay reduced by 34 days of applicant delay).

The $200.00 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 19-0365, as authorized.

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.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen

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PATENT CASE
IN01155K

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
S. Venkatraman *et al.*	Examiner: D. Lukton
Serial No.: **09/836,636**	
Filed: **April 17, 2001**	Group Art Unit: 1653
For: **"Macrocyclic NS3-Serine Protease Inhibitors of Hepatitis C Virus Comprising Alkyl and Aryl Alanine P2 Moieties"**	

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

APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. § 1.705)(b)

Sir:

1. This is a request for reconsideration of the patent term adjustment of 132 days indicated in the Determination of Patent Term Adjustment Under 35 U.S.C. §154(b) that was attached to the Notice of Allowance mailed on March 10, 2004 in the present case. It is respectfully submitted that Applicants be afforded a patent term adjustment of **406 days**.

2. The issue fee has not yet been paid.

3. Applicants submit herewith a "Statement of the Correct Patent Term Adjustment: Grounds Under 37 C.F.R. § 1.702 For the Adjustment" (37 C.F.R. § 1.705 (b) (2)(i) and (ii)).

4. Any patent granted on this application (37 C.F.R. § 1.705 (b) (2)(iii)) is not subject to a terminal disclaimer.

5. As to circumstances during the prosecution of this application constituting a failure to engage in reasonable efforts to conclude processing

4/06/2005 AKELLEY 00000011 190365 09836636
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SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1 1990)
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-0530

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OFFICE OF PETITIONS

In re	: DECISION ON APPLICATION
Venkatraman, et al.	: FOR PATENT TERM ADJUSTMENT
Application No. 09/836,636	: AND NOTICE OF INTENT
Filed: April 17, 2001	: TO ISSUE
Patent No. 6,914,122	: CERTIFICATE OF CORRECTION
Issue: July 5, 2005	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT", filed July 20, 2005. Applicants request that the patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred seventy-three (373) days to four hundred six (406) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **four hundred eighty-three (483)** days.

On March 10, 2004, 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 one hundred thirty-two (132) days. On March 23, 2004, applicants timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance was four hundred six (406) days.

The application for patent term adjustment was granted in part in a decision mailed on April 6, 2005. The decision explained that as of the mailing date of the Notice of Allowance, applicants were entitled to a patent term adjustment of two hundred fifteen (215) days (249 days of PTO delay, reduced by 34 days of applicant delay). However, applicants' request that additional PTO delay of one hundred fifty-seven (157) days be assessed due to a projected issue date of September 21, 2004 was held in abeyance until after the actual patent date.

On July 20, 2005, the patent issued with a patent term adjustment of three hundred seventy-three (373) days (444 days of PTO delay, reduced by 154 (120+34) days of applicant delay). The adjustment of one hundred twenty (120) days and the PTO delay of 444 days are at issue.

Pursuant to 37 C.F.R. § 1.704(e), an application for patent term adjustment will not be considered a "failure to engage" under 37 C.F.R. § 1.704(c)(10). Accordingly, the delay of 120 days is incorrect.

In addition, the PTO delay of 444 days is incorrect. As set forth in the first decision on PTA mailed April 6, 2005, as of the date of mailing of the Notice of Allowance, PTO delay was 249 days. In addition, PTO delay of two hundred sixty-eight (268) days should have been assessed pursuant to 37 C.F.R. §1.703(a)(6) for failure of the Office to issue the patent within four months from the receipt of the issue fee.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **four hundred eighty-three (483) days** (517 days of PTO delay reduced by 34 days of applicant delay).

No fee is required and none has been charged.

---

[1] PALM records indicate that applicants paid the issue fee on March 31, 2004.

The application file is being forwarded to the Certificate of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. § 254 and 37 CFR 1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **four hundred eighty-three (483)** days subject to any disclaimers.

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

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: draft Certificate of Correction

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20060201

DATE : February 17, 2006

TO SPE OF : ART UNIT

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

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: Campell Bruce **Art Unit** 1654

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FINNEGAN, HENDERSON, FARABOW, GARRETT &
DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

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JUL 1 7 2002

OFFICE OF PETITIONS

Applicant: Sylvaine Kravtcheno et al.
Appl. No.: 09/836,643
Filing Date: April 18, 2001
Title: COMPOSITIONS FOR OXIDATION DYEING KERATINOUS FIBERS COMPRISING AT LEAST ONE 1-(4-AMINOPHENYL)PYRROLIDINE AND AT LEAST ONE THICKENING POLYMER COMPRISING AT LEAST ONE SUGAR UNIT, AND DYEING METHODS
Attorney Docket No.: 05725.0879-00
Pub. No.: US 20020026675 A1
Pub. Date: March 7, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on April 24, 2002 for the above-identified application.

The request is granted-in-part.

The corrected patent application publication will be published in due course and will only include corrections for errors made by the Office.

A patent application publication is based on the application papers as originally filed, according to 37 CFR 1.215(a), which says the following, in part:

> (a) . . . The patent application publication will be based upon the application papers deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application . . . The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." The instant request includes mistakes that are not the fault of the Office, which will not be corrected by a corrected publication made by the Office.

Specifically, the error applicant labels "U" in the request will not be corrected as requested, as the patent application publication correctly reflects the application as originally filed. See the chemical formula on page 34.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system

requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be addressed as follows:

By mail to: Box PGPUB
Commissioner for Patents
Washington, DC 20231

By facsimile: 703-305-8568

The application is being forwarded to the Office of PreGrant Publication (PG-PUB) in Crystal Park 3-905 for further processing.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta

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

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Paper No. 7

ORUM & ROTH
53 WEST JACKSON BOULEVARD
CHICAGO IL 60604-3606

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NOV 1 5 2001

OFFICE OF PETITIONS

In re Application of
Wrasman, et al.
Application No. 09/836,672
Filed: April 16, 2001
Attorney Docket No. 5845

DECISION ON PETITION

This is a decision on the "Petition for Entitlement to Filing Date", filed August 22, 2001[1], which is being treated as a Petition Under 37 CFR 1.53(e) to accord the above-identified application a filing date of April 16, 2001.

Application papers in the above-identified application were filed on April 16, 2001. However, on June 12, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings.

Applicant asserts that the application was in fact filed with drawings, and that no further deposit of drawings is necessary to be entitled to a filing date. In support thereof, applicant submitted a postcard receipt identifying this application, itemizing "Drawings - 2 Sheets" as enclosed, bearing a United States Patent and Trademark Office date-stamp of April 16, 2001, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

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

Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 04-2219.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of April 16, 2001, using the application papers received in the Office on that date and 2 sheets of drawings resupplied on petition filed August 22, 2001. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE. Applicant is reminded that a Notice to File Missing Parts was mailed on August 21, 2001.

---

[1] Supplemented by a "re-petition" filed September 21, 2001. In his August 22nd petition, petitioner mistakenly submitted the postcard receipt from another application.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.

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

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DUNNER LLP
1300 I STREET, NW
WASHINGTON DC 20005

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AUG 1 2 2002

OFFICE OF PETITIONS

Applicant: Sylvain Kravtchenko et al.
Appl. No.: 09/836,703
Filing Date: April 18, 2001
Title: COMPOSITIONS FOR OXIDATION DYEING KERATINOUS FIBERS COMPRISING AT LEAST ONE 1-(4-AMINOPHENYL) PYRROLIDINE AND AT LEAST ONE CATIONIC POLYMER, AND DYEING METHODS
Attorney Docket No.: 05725.0881-00
Pub. No.: US 20020053111 A1
Pub. Date: May 9, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 9, 2002 for the above-identified application.

The request is granted-in-part.

The corrected patent application publication will be published in due course and will only include corrections for errors made by the Office.

A patent application publication is based on the application papers as originally filed, according to 37 CFR 1.215(a), which says the following, in part:

> (a) . . . The patent application publication will be based upon the application papers deposited on the filing date of the application, as well as the executed oath or declaration submitted to complete the application . . . The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." The instant request includes mistakes that are not the fault of the Office, which will not be corrected by a corrected publication made by the Office.

Specifically, the error applicant labels "T" in the request includes only one Office error, in that the other alleged errors are not clearly Office errors. The subscripts are fuzzy, faint and blurred such that no mistake is apparent for the Office records. Only the first lower "--CH_3" group should be corrected, the other requested corrections in this formula should not be corrected, as they are not clearly Office errors.

Specifically, the errors applicant labels "E", "F", "H", "N", "R", "S", "W", "AA" in the request will not be corrected as the published application correctly reflects the application as originally filed, see pages 18, 24, 30, 44, 63, 64, 68 and 75 respectively, which do not clearly show the formulas as suggested by applicant's representative. Many of the subscripts and superscripts are fuzzy, faint and blurred such that no mistake is apparent for the Office records.

The applicant is advised that he may want to consider filing an amendment replacing many of the chemical formula in the specification as originally filed, as many of the subscripts in the chemical formulas are not legible and errors might occur in any patent that issues from the application.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for reconsideration of this decision, should be addressed as follows:

By mail to: Box PGPUB
Commissioner for Patents
Washington, DC 20231

By facsimile: 703-305-8568

The application is being forwarded to the Office of Pre-Grant Publication (PG-PUB) in Crystal Park 3-905 for further processing.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2/22/07

Paper No.: _____

TO SPE OF : ART UNIT 1637

SUBJECT : Request for Certificate of Correction for Appl. No.: 9/836704 Patent No. 6743905B2

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**.

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

SPE

1637
Art Unit

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United States Patent and Trademark Office
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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
767 THIRD AVENUE
25TH FLOOR
NEW YORK, NY 10017-2023

In re Application of	:
ABE et al	:
Serial No.: 09/836,705	: Decision on Petition
Filing Date: 17 April 2001	:
Attorney Docket No. 01149/HG	:

This letter is in response to the Petition filed on 8 October 2003, under 37 CFR 1.144 to review the restriction requirement. The delay in acting upon this petition is regretted.

BACKGROUND

This application was filed with 55 claims. On 19 February 2003, the examiner restricted the claims into 21 groups as follows.

> Restriction to one of the following inventions is required under 35 U.S.C. 1 121:
> I. Claims 1-4, 8-10, 13-17, 23-34, and 54, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 37/38, classified in class 435, subclass 252.3.
>
> II. Claims 1, 5-7, 8, 11, 12, 18-34, and 55, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 41/42, classified in class 435, subclass 252.3.
>
> III. Claims 35-37, drawn to polypeptides relating to SEQ ID N0: 38, classified in class 435, subclass 195.
>
> IV. Claims 35, 38, and 39, drawn to polypeptides relating to SEQ ID NO: 42, classified in class 530, subclass 350.
>
> V. Claims 40-43, 45, drawn to methods of producing ML-236B or pravastatin using SEQ ID NO: 37, classified in class 435, subclass 156.

VI. Claims 40-43, 45, drawn to methods of producing ML-236B or pravastatin using SEQ ID NO: 41, classified in class 435, subclass 156.

VII. Claim 44, drawn to ML-236B compound, classified in class 435, subclass 156.

VIII. Claim 46, drawn to antibodies to SEQ ID N0: 38, classified in class 530, subclass 387.1.

IX. Claim 46, drawn to antibodies to SEQ ID NO: 42, classified in class 530, subclass 387.1.

X. Claims 47-51, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 43/44, classified in class 435, subclass 252.3.

XI. Claims 47-51, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 45/46, classified in class 435, subclass 252.3.

XII. Claims 47-51, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 47/48, classified in class 435, subclass 252.3.

XIII. Claims 47-51, drawn to polynucleotides, vectors, and host cells relating to SEQ ID No: 49/50, classified in class 435, subclass 252.3.

XIV. Claim 52, drawn to polypeptides relating to SEQ ID NO: 44, classified in class 435, subclass 183.

XV. Claim 52, drawn to polypeptides relating to SEQ ID NO: 46, classified in class 435, subclass 183.

XVI. Claim 52, drawn to polypeptides relating to SEQ ID NO: 48, classified in class 435, subclass 190.

XVII. Claim 52, drawn to polypeptides relating to SEQ ID NO: 50, classified in class 435, subclass 190.

XVIII. Claim 53, drawn to methods of producing ML-236B using SEQ ID No: 43/44, classified in class 435, subclass 156.

XIX. Claim 53, (drawn to methods of producing ML-236B using SEQ ID No: 45/46, classified in class 435, subclass 156.

XX. Claim 53, drawn to methods of producing ML-236B using SEQ ID N0s: 47/48, classified in class 435, subclass 156.

XXI. Claim 53, drawn to methods of producing ML-236B using SEQ ID No: 49/50, classified in class 435, subclass 156.

On 12 March 2003, Applicants elected Group VI (claims 40-43, and 45, drawn to method of producing ML-236B or pravastatin using SEQ ID No 41) with traverse. The examiner considered the traversal and made the restriction requirement **FINAL**. Claims 1-39, 44, 46-55 were withdrawn from consideration as non-elected inventions.

Claims 40-43 and 45 were rejected under 35 USC 112 first and second paragraph for indefiniteness. Claims 40, 42-43 and 45 were rejected under 35 USC 102(a) as being anticipated by WO 2001/12814.

On 8 October 2003, Applicants filed this petition along with an amendment to the claims.

DISCUSSION

The file record and petition have been reviewed carefully.

The petition proposes three different modifications of the Restriction Requirement each of which is discussed in turn:

First Proposed Grouping:

Rejoinder of Groups I to III, V to VII and X to XXI because all were classified in Class 435.

Rejoinder of Groups IV, VII (sic, VIII) and IX because both were classified in Class 530.

The first proposed grouping has been considered but is found to be not persuasive because classification of inventions by Class alone is not reflective of the burden entailed in searching the various inventions. It is noted that Groups I to III, V to VII and X to XXI were placed in one of Class 435, subclasses 252.3, 195, 156, 183 and 190, respectively. Furthermore, Groups IV, VIII and IX were placed in one of Class 530, subclasses 350 or 387.1, respectively. An extensive search of multiple inventions in more than one class/subclass would require undue search burden. Additionally, in the biotechnology art, classification is only indication of the burden of search. Literature searches in scientific journals along with sequence and structure searches of patent and non-patent databases is far more relevant for applications claiming molecules described in terms of nucleic or amino acid sequences. This arguments concerning the first proposed grouping is not perssauive.

Second Proposed Grouping.

> Rejoinder of DNA Groups I, II and X to XIII because these are classified in Class 435, Subclass 252.3;
>
> Rejoinder of "Method" Groups V to VII and XVII (sic, XVIIII) to XXI because these are classified in Class 435, Subclass 156;
>
> Rejoinder of Antibody Groups VIII and IX because these are classified in Class 530, Subclass 387.1
>
> Rejoinder of Polypeptide Groups III, IV and XIV to XVII because these are classified in Class 435, Subclass 183 or 190.

The second proposed grouping has been considered carefully but is deemed not to be persuasive for the following reasons.

While the DNA Groups are all placed in the same class and subclass, it is noted that Groups I, II, X, XI, XII and XIII are directed to nucleic acid related to SEQ ID Nos 37/38, 41/42, 43/44, 45/46 and 47/48, respectively. While there is some commonality with respect to the various nucleic acids in that they have been isolated from the same source species and that their encoded proteins are involved in ML-236B biosynthesis, this is not sufficient reason to rejoin the Groups. MPEP 803 states that

> Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq.

Applicants may petition pursuant to 37 CFR 1.181 for examination of additional nucleotide sequences by providing evidence that the different nucleotide sequences do not cover independent and distinct inventions. However, if such a petition were filed and granted, prior art applied to one sequence may be applied under 35 USC 103, in view of applicant's admission.

"Method" Groups V, VI, XVIII, XIX, XX and XXI are directed to methods of using nucleic acid SEQ ID No 37, 41, 43, 45, 47 and 49, respectively. Each of these methods would require a search of the the particular sequence. Concurrent search and examination of the methods is burdensome for the reasons set forth above with regard to concurrent examination of the DNA productgroups. Group VII has been included in the proposed "Method" groups, however Group VII is not a method. Group VII contains product claims drawn to ML-236B compound, which is produced by the methods of claims V, VI, XVII-XXI. Similarly Group XVII is not a method, but is a product invention drawn to polypeptides which are neither made by or used directly in the methods of Groups V, VI, XVIII, XIX, XX and XXI. Concurrent examination of the "Method" groups would require undue search and examination burden.

Turning now to the Antibody Group, Group VIII is directed to antibodies that bind SEQ ID NO 38; Group IX is directed to antibodies which bind SEQ ID NO 42. The search for antibodies is not co-extensive and requires a text search of the scientific literature in addition to the sequence search for the structure of the antibody and the antigen and relevant search of the US and foreign patent databases. It is unlikely that applicants would accept prior art teaching an antibody which binds to SEQ ID No 38 on claims limited to an antibody that binds to SEQ ID NO 42. For these reasons, a concurrent examination of Group VIII and IX would require undue search burden.

Turning now to the "polypeptide Groups", it is noted that Groups III, IV XIV, XV, XVI and XVII are classified in Class 435, subclass 195, 350, 183, 183, 190, 190, and 156, respectively. These Groups are not classified in the same class and subclass and for this reason alone, rejoinder of these Groups would result in an undue search burden.

Third Proposed Grouping:

> Rejoinder of Groups V and VI because both share claims 40-43 and 45.
>
> Rejoinder of Groups VIII and IX because both share claims 46.
>
> Rejoinder of Groups XIV to XVII because all share claim 52.
>
> Rejoinder of Groups XVIII to XXI because all share claim 53.

Applicants request rejoinder of Groups that contain the same claims, citing MPEP 803.02. Applicants argue that the inventions should have been treated as an election of species, not as a restriction requirement.

MPEP 803.02 states in part

> If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require restriction. Since the decisions in In re Weber, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and In re Haas, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. In re Harnish, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and Ex parte Hozumi, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility.

The original form of representative claims placed in two or more groups are set forth below.

Claim 40.

A method for producing ML-236B comprising
(a) culturing a host cell transformed by a vector comprising a polynucleotide encoding a protein having the amino acid sequence of SEQ ID NO 42, or a polynucleotide variant thereof encoding a modified amino acid sequence having at least one deletion, substitution or alteration, said polynucleotide variant being capable of increasing the transcription of a gene selected from the group consisting of mlcA, mlcB , mlcC and mlcD, said polynucleotide variant having at least an 80 % identity with SEQ ID NO 42, and
(b) recovering ML-236B from the resultant culture.

Claim 46

An antibody reactive with the protein of SEQ ID NO 38 or SEQ ID NO 42.

Claim 52.
A polypeptide encoded by a polynucleotide according to claim 47 or 48.

Claim 53.
A method for the production of ML236B comprising culturing a host cell according to claim 51 and then recovering ML-236B from the culture.

It is noted that Claims 52 and 53 depend, directly or indirectly, upon claim 47, as follow.

Claim 47.

A polynucleotide encoding a protein having the amino acid sequence selected from the group consisting of SEQ ID NO SEQ ID NO 46, SEQ ID NO 48 and SEQ ID NO 50, or a variant polynucleotide encoding a modification said amino acid or sequence having a deletion, substitution, addition alteration, said variant polynucleotide being capable accelerating the biosynthesis of ML-236B.

The third proposed grouping has been considered carefully but is deemed not to be persuasive for the following reasons. MPEP 803.02 requires that compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility. The products listed in or used in each of the proposed groups do not share a common utility and/or a substantial structural feature disclosed as being essential to that utility

Fr example, claim 46 recites two products, in the alternative, which have been placed in Groups VIII and IX. The antibodies of claim 46 do not share a common utility because an antibody that binds to the protein having SEQ ID NO 38 is not required to a protein having SEQ ID No 42. Moreover, the antibodies which bind to protein having SEQ ID NO 42 is not required to a protein having SEQ ID No 38.

Furthermore, the products encompassed by Claim 46 do not meet the requirement of a Markush group because there is no particular required substantial structural feature shared among the products. The antibodies of Claim 46 share not common disclosed structure.

Turning now to Groups XIV-XVII and XVIII-XXI, which ultimately refer back to claim 47, the products of Claim 47 do not meet the requirement of a Markush group because there is no particular required substantial structural feature shared among the products. The polynucleotides of Claim 47 may have a common utility, the property of accelerating the biosynthesis of ML-236B, however, no structure is disclosed or claimed as being essential to that utility. MPEP 803.02 does not require an election of species among various methods of using products which fail to have "unity of invention."

Thus, rejoinder of Groups V and VI directed to claims 40-43 and 45, rejoinder of Groups VIII and IX, directed to claim 46, rejoinder of Groups XIV to XVII directed to claim 52 and rejoinder of Groups XVIII to XXI directed to claim 53 is not required by MPEP 803.02, Markush practice and would result in undue search burden.

Applicants argue that there is a commonality with respect to the two genes in that they are both polynucleotides from the same source species and that their encoded proteins are involved in ML-236B biosynthesis. However, the source from which a product is isolated is immaterial to patentable distinction and to the search burden, because identical products may be isolated from different sources. Similarly, the purported common property, involvement in ML-236B biosynthesis, is an insufficient reason to require concurrent examination because many unrelated and patentably distinct proteins may be involved the various steps of any biosynsthetic pathway. Thus the examiner was correct in requiring a restriction requirement, not an election of species, among the various inventions.

The amendment filed 8 October 2003 presents new claims 56-60, which will be examined along with the elected invention, because the SANK 7599 contains elected sequence SEQ ID No. 41.

DECISION

The petition is **DENIED** for the reasons set forth above.

Any request for reconsideration of this decision must be made by a renewed petition and must be filed within **TWO MONTHS** of the mailing date of this decision in order to be considered timely.

Applicants remain under obligation to reply to the time period set forth in the Final rejection mailed January 16, 2004.

Should there be any questions with regard to this letter, please contact Special Program Examiner Julie Burke by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria VA, 22313-1450 or by telephone at (571) 272-1600.

Bruce Kisliuk
TC1600 Group Director

UNITED STATES PATENT AND TRADEMARK OFFICE

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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

In re Patent No. 7,056,710	: DECISION REGARDING PTA and
Issued: June 6, 2006	: NOTICE OF INTENT TO ISSUE
Application No. 09/836,705	: CERTIFICATE OF CORRECTION
Filed: April 17, 2001	:
Atty. Dkt. No.: 01149/HG	:

This decision is in response to the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN AN ISSUED PATENT (37 CFR §1.705(d))," filed June 27, 2006.

The application for patent term adjustment (PTA) under 37 CFR 1.705(d) is hereby **GRANTED**. The Office will *sua sponte* issue a certificate of correction reflecting this decision. The Office will also adjust the PAIR determination to reflect 78 additional days of PTA to applicant.

The above-identified application matured into U.S. Patent No. 7,056,710 on June 6, 2006. The patent issued with a PTA of 218 days. The instant application for PTA was timely filed June 27, 2006. Patentees argue that the adjustment of 377 days was improperly reduced 78 days in connection with a drawing submission on March 21, 2006.

Review of the application history reveals that at the time of issuance, an adjustment 377 days could be attributed to the Office in accordance with 37 CFR 1.702.

The adjustment of 377 days was properly reduced 81 days under 37 CFR 1.704 for failures to engage in reasonable efforts to conclude prosecution.

The adjustment of 377 days was improperly reduced 78 days, as argued by patentees, relative to the drawing submission on March 21, 2006. After the mail date of the notice of allowance, the Office requested that patentees submit a courtesy copy of two of the drawings that were originally filed on April 7, 2001. In that patentees were merely providing the same drawings as initially filed, the submission of such drawings on March 23,

2006 is not considered a failure to engage in reasonable efforts to conclude prosecution of the application. If patentees had made any changes to such drawings, then patentees would have failed to engage in reasonable efforts to conclude prosecution of the application under 37 CFR 1.704(c)(10).

Therefore, at the time of issuance, the patent was entitled to an adjustment of 296 days, as argued by patentees.

Receipt is hereby acknowledged of the required application fee of $200.00.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 296 days.

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

Kery A Fries

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

Enclosure: Draft Certificate of Correction
Adjusted PAIR calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	7,056,710 B2
DATED	:	June 6, 2006
INVENTOR(S)	:	Abe, et al.

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 218 days

Delete the phrase "by 218 days" and insert – by 296 days--

Day : Monday
Date: 8/21/2006

PALM INTRANET

Time: 10:54:33

PTA Calculations for Application: 09/836705			
Application Filing Date:	04/17/2001	PTO Delay (PTO):	377
Issue Date of Patent:	06/06/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	159
Post-Issue Petitions:	0	Total PTA (days):	296
PTO Delay Adjustment:	78		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
108	08/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	78		
103.5	05/17/2006	PTA 36 MONTHS			
103	06/06/2006	PATENT ISSUE DATE USED IN PTA CALCULATION	130		90
102	05/11/2006	EXPORT TO FINAL DATA CAPTURE			
101	05/08/2006	FINISHED INITIAL DATA CAPTURE			
100	05/08/2006	DISPATCH TO FDC			
99	03/21/2006	MISCELLANEOUS INCOMING LETTER		0	
98	03/21/2006	WORKFLOW - DRAWINGS FINISHED		78	
97	03/23/2006	WORKFLOW - QUERY REQUEST - FINISH			
96	03/22/2006	RECEIPT INTO PUBS			
95	03/22/2006	RECEIPT INTO PUBS			
94	03/22/2006	RECEIPT INTO PUBS			
93	03/16/2006	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
92	03/13/2006	WORKFLOW - QUERY REQUEST - BEGIN			
91	01/20/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
90	09/27/2005	ISSUE FEE PAYMENT VERIFIED			
89	11/09/2005	SEQUENCE FORWARDED TO PUBS ON TAPE			
88	09/27/2005	ISSUE FEE PAYMENT RECEIVED			
87	07/11/2005	EXPORT TO INITIAL DATA CAPTURE			
86	07/12/2005	RECEIPT INTO PUBS			
85	07/12/2005	RECEIPT INTO PUBS			
84	07/12/2005	RECEIPT INTO PUBS			
83	07/01/2005	MAIL NOTICE OF ALLOWANCE			
82	06/27/2005	ISSUE REVISION COMPLETED			

81	06/27/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
80	06/27/2005	NOTICE OF ALLOWABILITY			
79	04/29/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
78	04/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		8	67
76	03/26/2002	PRELIMINARY AMENDMENT			
75	02/12/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
74	10/25/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
73	10/25/2001	PRELIMINARY AMENDMENT			
72	04/17/2001	PRELIMINARY AMENDMENT			
71	04/25/2005	DATE FORWARDED TO EXAMINER			
70	04/18/2005	SUPPLEMENTAL RESPONSE			
69	04/22/2005	CORRESPONDENCE ADDRESS CHANGE			
68	04/21/2005	DATE FORWARDED TO EXAMINER			
67	04/11/2005	RESPONSE AFTER NON-FINAL ACTION			
66	01/13/2005	MAIL NON-FINAL REJECTION			
65	01/10/2005	NON-FINAL REJECTION			
64	10/08/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
63	11/08/2004	DATE FORWARDED TO EXAMINER			
62	10/08/2004	SUPPLEMENTAL RESPONSE		21	55
61	10/21/2004	DATE FORWARDED TO EXAMINER			
60	10/08/2004	SUPPLEMENTAL RESPONSE			
59	10/08/2004	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
58	10/08/2004	WORKFLOW INCOMING AMENDMENT IFW			
57	02/12/2002	REFERENCE CAPTURE ON IDS			
56	09/30/2004	DATE FORWARDED TO EXAMINER			
55	09/17/2004	RESPONSE AFTER NON-FINAL ACTION			
54	09/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
53	09/17/2004	WORKFLOW INCOMING AMENDMENT IFW			
52	07/15/2004	MAIL NON-FINAL REJECTION			
51	07/07/2004	NON-FINAL REJECTION			
50	05/06/2004	DATE FORWARDED TO EXAMINER			

49	04/28/2004	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
48	05/06/2004	DATE FORWARDED TO EXAMINER			
47	04/28/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)		12	24
46	05/06/2004	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
45	04/28/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
41	04/28/2004	WORKFLOW INCOMING AMENDMENT IFW			
40	04/28/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
39	04/22/2004	MAIL ADVISORY ACTION (PTOL - 303)			
38	04/21/2004	ADVISORY ACTION (PTOL-303)			
37	04/19/2004	DATE FORWARDED TO EXAMINER			
36	04/08/2004	AMENDMENT AFTER FINAL REJECTION			
35	04/14/2004	WORKFLOW INCOMING AMENDMENT IFW			
34	04/16/2004	DATE FORWARDED TO EXAMINER			
33	04/13/2004	AMENDMENT AFTER FINAL REJECTION			
32	04/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	04/08/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
30	04/16/2004	DATE FORWARDED TO EXAMINER			
29	04/08/2004	AMENDMENT AFTER FINAL REJECTION			
28	04/13/2004	WORKFLOW INCOMING AMENDMENT IFW			
27	04/08/2004	WORKFLOW INCOMING AMENDMENT IFW			
26	03/18/2004	PETITION DECISION - DENIED			
25	10/08/2003	PETITION ENTERED			
24	01/16/2004	MAIL FINAL REJECTION (PTOL - 326)			
23	01/12/2004	FINAL REJECTION			
22	10/29/2003	DATE FORWARDED TO EXAMINER			
21	10/08/2003	RESPONSE AFTER NON-FINAL ACTION		40	18
20	10/08/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
19	06/10/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
18	05/29/2003	MAIL NON-FINAL REJECTION			
17	05/28/2003	NON-FINAL REJECTION			
16	03/24/2003	DATE FORWARDED TO EXAMINER			

15	03/12/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
14	02/19/2003	MAIL RESTRICTION REQUIREMENT	247		-1
13	02/14/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
12	09/28/2002	CASE DOCKETED TO EXAMINER IN GAU			
11	07/01/2002	APPLICATION DISPATCHED FROM OIPE			
10	06/28/2002	APPLICATION IS NOW COMPLETE			
9	10/25/2001	TRANSLATION OF CLAIMS INTO ENGLISH			
8	10/25/2001	A SET OF SYMBOLS AND PROCEDURES, PROVIDED TO THE PTO ON A SET OF COMPUTER LISTINGS, THAT DESCRIBE IN			
7	10/25/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
6	10/11/2001	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
5	06/10/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
4	10/09/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	10/05/2001	CORRESPONDENCE ADDRESS CHANGE			
2	04/29/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	04/17/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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CYNTHIS B. ROTHSCHILD
KILPATRICK STOCKTON LLP
1001 WEST FOURTH STREET
WINSTON-SALEM NC 27101

COPY MAILED

NOV 1 6 2004

OFFICE OF PETITIONS

In re Application of	:	
Andrew Patton et al	:	
Application No. 09/836,746	:	DECISION GRANTING PETITION
Filed: April 17, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 41305-253159	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 24, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of December 1, 2003 is accepted as having been unintentionally delayed.

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

The application file is being referred to Technology Center Art Unit 1639.

Karen Ceasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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WINDY STRICKLAND
2012 BOB WHITE CT
MARY ESTHER FL 32569

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OFFICE OF PETITIONS

In re Application of :
Bhupal Kanaiyalal Dharia et al. :
Application No. 09/836,752 : ON PETITION
Filed: April 17, 2001 :
Attorney Docket No. **SPECT-01042US0 DEL** :

This is a decision on the petition filed August 14, 2006 under 37 CFR 1.137(b),[1] to revive the above-identified application.

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

This application became abandoned November 18, 2005 for failure to timely pay the issue fee on or before November 17, 2005. Accordingly, a Notice of Abandonment was mailed June 13, 2006.

The issue fee, publication fee and petition fee have all been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In 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(c)).

#9
DW

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

AUG 15 2003

MAILED

AUG 15 2003

OFFICE OF THE DIRECTOR
TC 3600

Tarolli, Sundheim, Covell & Tummino L.L.P.
526 Superior Avenue, Suite 1111
Cleveland, OH 44114

In re Application of
Cornelius Peter
Application No. 09/836,763
Filed: April 17, 2001
For: BELT RETRACTOR

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicant's correspondence filed in the United States Patent and Trademark Office (USPTO), on March 11, 2003. This correspondence is being treated as a petition to withdraw the holding of abandonment. There is no fee for this petition.

The petition is **DISMISSED.**

A review of the file record reveals that a Notice of Allowance and Issue Fee Due and a Notice of Allowability were mailed to the applicant on August 27, 2002. Since no Issue Fee in response to the August 27, 2002 Office communication was filed, the application was held abandoned.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of November 27, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received,"

1156 O.G.53 (November 16, 1993). The petitioner has failed to comply with requirement (3) indicated above.

To satisfy requirement (3) above, a docket record showing all actions due by the firm of Tarolli, Sundheim, Covell & Tummino at and around the due date of November 27, 2002, needs to be supplied. Applicant has only provided a copy of the file wrapper contents and not a copy of a docket record as indicated above.

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 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Please contact me directly for inquiries specific to this decision.

Steven N. Meyers, Special Program Examiner
Patent Technology Center 3600
(703) 308-3868

snm/dxn: 8/13/03

#12
DW

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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FEB 27 2004

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FEB 27 2004
OFFICE OF THE DIRECTOR
TC 3600

Tarolli, Sundheim, Covell & Tummino L.L.P.
526 Superior Avenue, Suite 1111
Cleveland, OH 44114

In re Application of	:	
Cornelius Peter	:	DECISION ON PETITION
Application No. 09/836,763	:	TO WITHDRAW THE
Filed: April 17, 2001	:	HOLDING OF ABANDONMENT
For: BELT RETRACTOR		

This is in response to applicant's renewed petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO) on February 13, 2004.

The petition is **GRANTED**.

A review of the file record reveals that a Notice of Allowance and Issue Fee Due and a Notice of Allowability were mailed to the applicant on August 27, 2002. Since no Issue Fee in response to the August 27, 2002 Office communication was filed, the application was held abandoned.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of November 27, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received,"

1156 O.G.53 (November 16, 1993). The petition filed March 11, 2003 failed to comply with requirement (3) indicated above.

The renewed petition filed October 1, 2003 provides a docket record showing all actions due by the firm of Tarolli, Sundheim, Covell & Tummino at and around the due date of November 27, 2002 and indicates no actions due with regards to the instant application (attorney docket no. TRW(AEC) 5797). Since requirements (1)-(3) above have now been met, the petition to withdraw abandonment is granted.

The abandonment will be withdrawn and the file returned to pending status.

Kenneth J. Dorner
Special Program Examiner
Patent Technology Center 3600
(703) 308-0866

KJD/mjz: 2/19/04

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

May 5, 2003

Peter C. Stomma
Boyle, Fredrickson, Newholm,
Stein & Gratz, S.C.
250 East Wisconsin Ave.
Suite 1030
Milwaukee, WI 53202

In re application of:
Jeffrey J. Gratz DECISION ON PETITION
Serial No.: 09/836,769
Filed: April 17, 2001
For: TWO-SIDED ROLL SUPPORT WITH MULTIPLE RIBS

This is a decision on the petitions received on October 7, 2002, 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 June 8, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned August 9, 2001. A notice of abandonment was mailed August 27, 2002.

On October 7, 2002, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice to File Missing Parts on August 3, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing parts mailed on August 3, 2001.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 3727.

The office regrets any inconvenience this may have caused the client.

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

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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COWAN LIEBOWITZ & LATMAN P.C.
JOHN J. TORRENTE
1133 AVE OF THE AMERICAS
NEW YORK NY 10036

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SEP 25 2008

In re Application of	:	
SHIMIZU, TETSUYA.	:	
Application No. 09/836,838	:	DECISION ON PETITION
Filed: 04/18/2001	:	
Attorney Docket No. B422-147A	:	

This is a decision on the petition under 37 CFR 1.181 (no fee), filed September 17, 2008, to withdraw of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to respond to the final Office action mailed February 6, 2008, which set a three (3) month shortened statutory period for reply. Accordingly, the application became abandoned on May 7, 2008. A Notice of Abandonment was mailed on September 19, 2008.

Petitioners assert that they did not receive the final Office action as it appears that the USPS may have been delivered it to the wrong law firm. A review of the written record indicates an irregularity in the mailing of the final Office action. The final Office action, which was correctly addressed to the correspondence address of record, was returned to the USPTO on February 19, 2008, as undeliverable. Accordingly, the holding of abandonment is withdrawn and the application is restored to pending status.

This application is being referred to the Technology Center technical support staff of Art Unit 2621 for re-mailing the final Office action and resetting the three (3) month shortened statutory period for reply from date of the re-mailing of the Office action.

Inquiries regarding this decision may be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Pa
United States Patent and Trademark
Washington, D.C.
www.usp

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MAY 0 8 2002

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2100

Paper No. 6

Anthony R. Barkume
GREENBERG, TRAURIG
200 PARK AVENUE
NEW YOUR, NY 10166

In re Application of: ITZHAKI	)	
Application No. 09/836,873	)	
Filed: April 17, 2001	)	**DECISION ON REQUEST FOR**
For: SYSTEM AND METHOD FOR	)	**WITHDRAWAL AS ATTORNEY**
DISSEMINATION OF COUNSELING	)	
AND ADVICE IN A DISTRIBUTED		
NETWORKING ENVIRONMENT		

This is a decision on the Request To Withdraw from Representation filed February 13, 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 effective date of withdrawal 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 filed February 13, 2002 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software,
and Electronic Commerce
(703) 305-9750

cc: Mr. Dani Itzhaki
C/O PSYCHOLOGY NETWORK.COM, INC.
17395 Biscayne Boulevard, Suite 401
North Miami Beach, Florida 33160

09/836885

6179617-0005

OIPE IAP64
JUN 20 2008
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

Certificate of mailing under 37 C.F.R. § 1.8
I hereby certify that this paper is being deposited with the United States Postal Service as first class mail on the date indicated below in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

John M. Genova — 32,224
Attorney Name — PTO Reg. No.

Signature — June 17, 2008
Date of Signature

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

PETITION FOR CERTIFICATE OF CORRECTION IN PATENT
(pursuant to 35 U.S.C. §256)

Correction of inventorship of the referenced patent is requested pursuant to 35 U.S.C. §256 and 37 C.F.R. §1.324(a) and (b).

A Request for Certificate of Correction (the "Request") pursuant to 35 U.S.C. §256 was mailed, according to 37 C.F.R. §1.8, on March 25, 2008 and directed to the Certificates of Correction Branch of the U.S. Patent and Trademark Office. On May 15, 2008, the Certificates of Correction Branch issued the attached letter stating that the Certificates of Correction Branch has no authority to act on the Request and that the Request should be directed to the Office of Petitions under cover of a petition letter.

07/03/2008 SSANDARA 00000011 231703 6553609
01 FC:1464 130.00 DA

Accordingly, Applicants are submitting herewith a copy of the Request and petition the Director to issue a certificate identifying the names of the three (3) inventors, **Barbara Kissich, Udo Utz** and **Stanislav Massini**, who, through error and without deceptive intent, were not named in the reference patent. The Request includes a true copy of each of the originally signed statements pursuant to 37 C.F.R. §1.324(b) from all of the parties and assignee in support of the Request. A true copy of the originally signed patent assignment from the original owners, i.e., the actual inventors, to the assignee was submitted concurrently with the Request for recordation pursuant to 37 C.F.R. §§3.11 and 3.73(b). That assignment was recorded on March 25, 2008 at Reel 020690 and Frame 0548.

Authorization is hereby given to charge the fee set forth in 37 C.F.R. §1.20(b), and any other required fee in connection with this communication, to Deposit Account No. 007470.

All of the requirements of 37 C.F.R. §1.324(a) and (b) have been met. Issuance of a certificate naming the actual inventors is respectfully requested. Attached at Exhibit 4 of the Request is a copy of Form PTO/SB/44 (also Form PTO-1050). Please send the Certificate to the undersigned Attorney.

Dated: June 17, 2008

Respectfully submitted,

John M. Genova
Reg. No. 32,224

Customer No. 007470
Direct Line: (212) 819-8832

Attachment

- copy of letter dated May 15, 2008 from the Certificates of Correction Branch

Enclosure

- copy of Request for Certificate of Correction in Patent filed March 25, 2008

OIPE IAP64
JUN 20 2008
PATENT & TRADEMARK OFFICE

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

RECEIVED
MAY 19 2008
RANKIN, HILL & CLARK LLP

5/15/08

Patent No. :6553609
Inventor(s) : DIETER TREMMEL
Issued : 4/29/2003
Title : APPARARTUS FOR FLOOR CLEANING
Atty.doc./File No.

Request for Certificates of Correction

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

Inspection of the application for the patent reveals that there need to be a petition letter to add inventorship to make this change by the office of petitions office. Therefore being no fault on the Patent and Trademark Office, It has no authority to issue a certificate of correction under the provision of 1.322.

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

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

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

RANKIN HILL PORTER & CLARK LLP
925 EUCLID AVENUE
CLEVELAND, OHIO 44115-1405

WHITE & CASE LLP
PATENT DEPARTMENT
MAY 27 2008
RECEIVED

HR/CBN

COPY

6179617-0005

OIPE
JUN 2 0 2008
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

Certificate of mailing under 37 C.F.R. § 1.8
I hereby certify that this paper is being deposited with the United States Postal Service as first class mail on the date indicated below in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

John M. Genova — 32,224
Attorney Name — PTO Reg. No.

Signature — March 25, 2008
Date of Signature

Certificates of Correction Branch
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR CERTIFICATE OF CORRECTION IN PATENT
(pursuant to 35 U.S.C. §256)

Correction of inventorship of the referenced patent is requested pursuant to 35 U.S.C. §256 and 37 C.F.R. §1.324(a) and (b).

Through error, the following three (3) persons were not named in the referenced patent as inventors: **Barbara Kissich, Udo Utz** and **Stanislav Massini**. Such error arose without deceptive intention on their part, either individually or collectively. Attached hereto is a true copy of each of the originally signed statements pursuant to 37 C.F.R. §1.324(b) from all of the parties and assignee in support of this request. A true copy of the originally signed patent assignment from the original owners, i.e., the actual inventors, to the assignee is being submitted concurrently herewith for recordation pursuant to 37 C.F.R. §§3.11 and 3.73(b).

COPY

Authorization is hereby given to charge the fee set forth in 37 C.F.R. §1.20(b), and any other required fee in connection with this communication, to Deposit Account No. ~~007470~~. REG # ✓

All of the requirements of 37 C.F.R. §1.324(a) and (b) have been met. Issuance of a certificate naming the actual inventors is respectfully requested. Attached is a copy of Form PTO/SB/44 (also Form PTO-1050). Please send the Certificate to the undersigned Attorney.

Dated: March 25, 2008

Respectfully submitted, VE 23-1703

John M. Genova
Reg. No. 32,224
WHITE & CASE
Customer No. 007470
Direct Line: (212) 819-8832

Attachments

1) Statement from each person being added as an inventor (37 C.F.R. §1.324(b)(1));
2) Statement from the current named inventors (37 C.F.R. §1.324(b)(2));
3) Statement from the assignee (37 C.F.R. §1.324(b)(3)); and
4) Form PTO/SB/44 (also Form PTO-1050)

OIPE IAP84
JUN 2 0 2008
PATENT & TRADEMARK OFFICE

ATTACHMENT 1

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

STATEMENT FROM EACH PERSON BEING ADDED AS AN INVENTOR
(37 C.F.R. §1.324(b)(1))

Through error, we **Barbara Kissich, Udo Utz** and **Stanislav Massini** were not named in the referenced patent as an inventor. Such error arose without deceptive intention on our part, either individually or collectively. Each of us request correction of inventorship of the referenced patent and issuance of a certificate naming the actual inventors.

By: .....
Name: **Barbara Kissich**
Address:
Sandstrasse 22
91080 Spardorf

14.1.07
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Massini Stanislav
Ziegl Str. 28
90579 Langenzenn

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethoven str. 16
91083 Hagenau

By: .....
Name: **Udo Utz**
Address: Herterstr. 45
71254 Ditzingen

30.12.2007
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Julia Utz
Herterstr. 45
71254 Ditzingen

.....
Signature of Witness
Name and address of Witness:
Reiner Utz
Fleckstrasse 5
91224 Pommelsbrunn

By: .....
Name: **Stanislav Massini**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: Udo Utz
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: Stanislav Massini
Address: Ziegelstr. 28
90579 Langenzenn

14.01.08
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Barbara Lissich
Sandstr. 22
91080 Spardorf

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethovenstr. 16
91083 Hugenay

OIPE IAP84
JUN 20 2008
PATENT & TRADEMARK OFFICE

ATTACHMENT 2

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

STATEMENT FROM THE CURRENT NAMED INVENTORS
(37 C.F.R. §1.324(b)(2))

We, **Dieter Tremmel, Peter Belkhofer, Andreas Kistner, Michael Kotz, Christian Neumann, Markus Merkl** and **Holger Sandner** are the current named inventors of the referenced patent. It is our understanding that a request for correction of inventorship of the subject patent has or will be made to include the names of the following three (3) inventors who were not named in the issued patent: Barbara Kissich, Udo Utz and Stanislav Massini. Each of us in our individual capacity agree to this change of inventorship and have no disagreement in regard to the requested change.

By: Dieter Tremmel
Name: **Dieter Tremmel**
Address: Wilhelmsharener Str. 97
D-90425 Nuernberg

27. Dez. 2007
Date of Inventor's Signature

WITNESSED BY:

Stefan Tremmel
Signature of Witness
Name and address of Witness:
STEPHAN TREMMEL
NEUE HEGELSTR. 26
90409 NÜRNBERG

Sonja Koch
Signature of Witness
Name and address of Witness:
Sonja Koch
Neue Str. 29a
91054 Erlangen

By: .....
Name: **Peter Belkhofer**
Address:
IRFERSDORFER WEG 5
85110 OBEREMMENDORF

17.12.2007
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
DIRK KRAUSS
AM FORT 15
85139 WETTSTETTEN

.....
Signature of Witness
Name and address of Witness:
Pris Cecilberg
Paul-Klee-Str. 31
85053 Ingolstadt

//

By: .....
Name: **Andreas Kistner**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

//

By: .....
Name: **Michael Kotz**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Peter Belkhofer**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: Andreas Kistner
Name: **Andreas Kistner**
Address: Marktplatz 8
91732 Merkendorf, Deutschland

04.01.2008
Date of Inventor's Signature

WITNESSED BY:

Sieglinde Kistner
Signature of Witness
Name and address of Witness:
Marktplatz-8-
91732 Merkendorf

Hans Kistner
Signature of Witness
Name and address of Witness:
Marktplatz-8-
91732 Merkendorf

By: .....
Name: **Michael Kotz**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Peter Belkhofer**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Andreas Kistner**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Michael Kotz**
Address: Im Nebelloch 28
71034 Böblingen

05.01.08
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
PETER BELKHOFER
IRFERSDORFER WEG 5
D-85110 OBEREMMENDORF

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethoven Str. 16
91083 Haßmersheim

By: .....
Name: **Christian Neumann**
Address:
Beethovenstr 1C
91083 Hagenau

05.01.2009
.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Michael Kotz
Im Nebelloch 28
71034 Böblingen

.....
Signature of Witness
Name and address of Witness:
PETER BÖLKHOFER
IRFERSDORFER WEG 5
D-85110 OBERERMENDORF

By: .....
Name: **Markus Merkl**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Holger Sandner**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Christian Neumann**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Markus Merkl**
Address: Rygan 22
92690 Pressath

11-02-08
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Massini Stanislav
Ziegelstr. 28
90579 Langenzenn

.....
Signature of Witness
Name and address of Witness:
Neumann Christian
Beethovenstr. 16
91083 Haganau

By: .....
Name: **Holger Sandner**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Christian Neumann**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

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Signature of Witness
Name and address of Witness:

By: .....
Name: **Markus Merkl**
Address:

.....
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: Holger Sandner
Name: **Holger Sandner**
Address: FALKENSTRASSE 2
91088 BUBENREUTH
GERMANY

18.12.07
Date of Inventor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
MARKUS RIEHL
ROTHENBURGER STR. 267
90439 NÜRNBERG

.....
Signature of Witness
Name and address of Witness:
Udo Zaumer
Ulmenstraße 26
91244 Reichenschwand

OIPE IAP84
JUN 20 2008
PATENT & TRADEMARK OFFICE

ATTACHMENT 3

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

STATEMENT FROM THE ASSIGNEE
(37 C.F.R. §1.324(b)(3))

Attached hereto is a copy of the patent assignment whereby the original owners, i.e., the actual inventors, of the referenced patent sold and assigned the entire right, title and interest in the referenced patent to the assignee, **ZYRUS** Beteiligungsgesellschaft mbh & Co. Patente I KG. It is my understanding that the patent assignment from the original owners, i.e., the actual inventors, to **ZYRUS** will be submitted concurrently herewith for recordation with the U.S. Patent and Trademark Office.

I am authorized to act on behalf of the assignee **ZYRUS** as evidenced by my signature and title below. **ZYRUS** agrees to the change of inventorship in the referenced patent to include the names of the following three (3) inventors who were not named in the issued patent: Barbara Kissich, Udo Utz and Stanislav Massini.

ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG

By: .....
Name: Gisela van der Weyden
Title: Geschäftsführerin
Adolf-Damaschke-Str. 18
D-04668 Grimma

28.02.2008
.....
Date of Assignee's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Dietmar Becker
Manteuffelstr. 51
D-12103 Berlin

.....
Signature of Witness
Name and address of Witness:
André Schiwon
Herta-Hammerbacher-Str. 17
D-14469 Potsdam

ATTACHMENT 3

First Named Inventor	: Dieter Tremmel
Patent No.	: 6,553,609 B2
Issued	: April 29, 2003
For	: APPARATUS FOR FLOOR CLEANING
Examiner	: Moore, Chris K.

STATEMENT FROM THE ASSIGNEE
(37 C.F.R. §1.324(b)(3))

Attached hereto is a copy of the patent assignment whereby the original owners, i.e., the actual inventors, of the referenced patent sold and assigned the entire right, title and interest in the referenced patent to the assignee, **ZYRUS** Beteiligungsgesellschaft mbh & Co. Patente I KG. It is my understanding that the patent assignment from the original owners, i.e., the actual inventors, to **ZYRUS** will be submitted concurrently herewith for recordation with the U.S. Patent and Trademark Office.

I am authorized to act on behalf of the assignee **ZYRUS** as evidenced by my signature and title below. **ZYRUS** agrees to the change of inventorship in the referenced patent to include the names of the following three (3) inventors who were not named in the issued patent: Barbara Kissich, Udo Utz and Stanislav Massini.

ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG

By: .....
Name: Dietmar Becker
Title: Geschäftsführer
Mauteuffelstr. 51
D-12103 Berlin

28.02.2008
Date of Assignee's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Gisela van der Weyden
Adolf-Damaschke-Str. 18
D-04668 Grimma

.....
Signature of Witness
Name and address of Witness:
André Schiwon
Herta-Hammerbacher-Str. 17
D-14469 Potsdam

PATENT ASSIGNMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we **Dieter Tremmel, Peter Belkhofer, Andreas Kistner, Michael Kotz, Christian Neumann, Markus Merkl, Holger Sandner, Barbara Kissich, Udo Utz** and **Stanislav Massini** (hereinafter individually and collectively referred to as the "ASSIGNOR(S)") are the owners of the entire right, title and interest in United States Letters Patent No. 6,553,609, issued 29. April 2003, and entitled "Apparatus for Floor Cleaning", and hereby sell and assign to ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG, a company created and organized under the laws of Germany and having an office at Berliner Straße 1, ~~15732~~ 12529 Schönefeld/OT Waltersdorf, Germany ("ASSIGNEE"), the entire right, title and interest in said Letters Patents, to be held and enjoyed by the ASSIGNEE, its successors, and assigns, as fully and entirely as the same would have been held and enjoyed by the ASSIGNOR(S) had this assignment and sale not been made.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year stated below.

Assignor(s):

By: Dieter Tremmel
Name: **Dieter Tremmel**
Address: Wilhelmshavener Str. 97
D - 90425 Nuernberg

27. Dez. 2007
Date of Assignor's Signature

WITNESSED BY:

Stephan Tremmel
Signature of Witness
Name and address of Witness:
NEUE HEGELSTR. 26
D - 90409 NÜRNBERG
STEPHAN TREMMEL

Sonja Koch
Signature of Witness
Name and address of Witness:
Neue Str. 29a
D-91054 Erlangen
Sonja Koch

By: .....
Name: **Peter Belkhofer**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

PATENT ASSIGNMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, we **Dieter Tremmel, Peter Belkhofer, Andreas Kistner, Michael Kotz, Christian Neumann, Markus Merkl, Holger Sandner, Barbara Kissich, Udo Utz** and **Stanislav Massini** (hereinafter individually and collectively referred to as the "ASSIGNOR(S)") are the owners of the entire right, title and interest in United States Letters Patent No. 6,553,609, issued 29. April 2003, and entitled "Apparatus for Floor Cleaning", and hereby sell and assign to ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG, a company created and organized under the laws of Germany and having an office at Berliner Straße 1, ~~15732~~ 12529 Schönefeld/OT Waltersdorf, Germany ("ASSIGNEE"), the entire right, title and interest in said Letters Patents, to be held and enjoyed by the ASSIGNEE, its successors, and assigns, as fully and entirely as the same would have been held and enjoyed by the ASSIGNOR(S) had this assignment and sale not been made.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the day and year stated below.

Assignor(s):

By: .....
Name: **Dieter Tremmel**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Peter Belkhofer**
Address:
IRFERSDORFER WEG 5
85110 OBEREMMENDORF

17. 12. 2007
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
DIRK KRAUSS
AM FORT 15
85139 WETTSTETTEN

.....
Signature of Witness
Name and address of Witness:
Iris Chomberg
Paul-Klee-Str. 31
85053 Ingolstadt

By: Andreas Kistner ..... 04.01.2008 .....
Name: **Andreas Kistner** Date of Assignor's Signature
Address: Marktplatz 8
91732 Merkendorf, Deutschland

WITNESSED BY:

Sieglinde Kistner ..... Hans Kistner .....
Signature of Witness Signature of Witness
Name and address of Witness: Name and address of Witness:
Marktplatz-8- Marktplatz-8-
91732 Merkendorf 91732 Merkendorf

By: ....
Name: **Michael Kotz** Date of Assignor's Signature
Address:

WITNESSED BY:

....
Signature of Witness Signature of Witness
Name and address of Witness: Name and address of Witness:

By: ....
Name: **Christian Neumann** Date of Assignor's Signature
Address:

WITNESSED BY:

....
Signature of Witness Signature of Witness
Name and address of Witness: Name and address of Witness:

By: .....
Name: **Andreas Kistner**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Michael Kotz**
Address: Im Nebelloch 28
71034 Böblingen

05.01.08
.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
PETER BELLHOFER
IRFERSDORFER WEG 5
D-85110 OBEREMMENDORF

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethovenstr. 16
91083 Hagenau

By: .....
Name: **Christian Neumann**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: ....
Name: **Andreas Kistner**
Address:

....
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:

....
Signature of Witness
Name and address of Witness:

//

By: ....
Name: **Michael Kotz**
Address:

....
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:

....
Signature of Witness
Name and address of Witness:

//

By: ....
Name: **Christian Neumann**
Address:
Beethovenstr. 16
91083 Hagenau

05.01.2008
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:
Michael Kotz
Im Nebelloch 28
71034 Böblingen

....
Signature of Witness
Name and address of Witness:
PETER BELKHOFER
IRFERSDORFER WEG 5
D-85110 OBEREMMENDORF

By: ....
Name: Markus Merkl
Address: Riggau 22
92690 Pressath

11.02.08
....
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:
Massini Stanislav
Ziegelstr. 28
90579 Langenzenn

....
Signature of Witness
Name and address of Witness:
Neumann Christian
Beethovenstr 16
91093 Hayenau

By: ....
Name: **Holger Sandner**
Address:

....
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:

....
Signature of Witness
Name and address of Witness:

By: ....
Name: **Barbara Kissich**
Address:

....
Date of Assignor's Signature

WITNESSED BY:

....
Signature of Witness
Name and address of Witness:

....
Signature of Witness
Name and address of Witness:

By: ....

Name: **Markus Merkl**

Address:

....

Date of Assignor's Signature

WITNESSED BY:

....

Signature of Witness

Name and address of Witness:

....

Signature of Witness

Name and address of Witness:

//

By: ....Holger Sandner....................

Name: **Holger Sandner**

Address: FALKENSTRASSE 2
91088 BUBENREUTH
GERMANY

18.12.07
....

Date of Assignor's Signature

WITNESSED BY:

....

Signature of Witness

Name and address of Witness:
MARKUS RIEHL
ROTHENBURGER STR. 263
90439 NÜRNBERG

....

Signature of Witness

Name and address of Witness:
Udo Zäuner
Ulmenstraße 26
91244 Reichenschwand

//

By: ....

Name: **Barbara Kissich**

Address:

....

Date of Assignor's Signature

WITNESSED BY:

....

Signature of Witness

Name and address of Witness:

....

Signature of Witness

Name and address of Witness:

By: ....

Name: **Markus Merkl**

Address:

.... Date of Assignor's Signature

WITNESSED BY:

.... Signature of Witness
Name and address of Witness:

.... Signature of Witness
Name and address of Witness:

//

By: ....

Name: **Holger Sandner**

Address:

.... Date of Assignor's Signature

WITNESSED BY:

.... Signature of Witness
Name and address of Witness:

.... Signature of Witness
Name and address of Witness:

//

By: B. Kissich ....

Name: **Barbara Kissich**

Address:

Sandstr. 22
91080 Spardorf

14.01.08
.... Date of Assignor's Signature

WITNESSED BY:

Massini .... Signature of Witness
Name and address of Witness:

Massini Stanislav
Ziegelstr. 28
90579 Langenzenn

.... Signature of Witness
Name and address of Witness:

Christian Neumann
Beethovenstr. 16
91093 Hagenau

(PAGE 3 of 4)

By: .....
Name: **Udo Utz**
Address: Herterstr. 45
71254 Ditzingen

30.12.2007
.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Julia Utz
Herterstr. 45
71254 Ditzingen

.....
Signature of Witness
Name and address of Witness:
Reiner Utz
Fleckstrasse 5
91224 Pommelsbrunn

By: .....
Name: **Stanislav Massini**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

Accepted by Assignee: **ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG**

By: .....
Name:
Title:

.....
Date of Assignee's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

(PAGE 4 of 4)

By: .....
Name: **Udo Utz**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Stanislav Massini**
Address: Ziegelstr. 28
90579 Langenzenn

14.01.08
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Barbara Kissel
Sandstr. 22
91080 Spardorf

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethovenstr. 16
91087 Hagenau

Accepted by Assignee: **ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG**

By: .....
Name: Gisela van der Weyden
Title: Geschäftsführerin
Adolf-Damaschke-Str. 12
D-04668 Grimma

28.02.2008
Date of Assignee's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Dietmar Becker
Manteuffelstr. 51
D-12103 Berlin

.....
Signature of Witness
Name and address of Witness:
André Schiwon
Herta-Hammerbacher-Str. 17
D-14469 Potsdam

(PAGE 4 of 4)

By: .....
Name: **Udo Utz**
Address:

.....
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:

.....
Signature of Witness
Name and address of Witness:

By: .....
Name: **Stanislav Massini**
Address: Ziegelstr. 28
90573 Langenzenn

14.01.08
Date of Assignor's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Barbara Kissel
Sandsh 22
91080 Spardorf

.....
Signature of Witness
Name and address of Witness:
Christian Neumann
Beethovenstr. 16
91083 Haßenau

Accepted by Assignee: **ZYRUS Beteiligungsgesellschaft mbH & Co. Patente I KG**

By: .....
Name: Dietmar Becker
Title: Geschäftsführer
Mauerstr. 51
D-12193 Berlin

28.02.2008
Date of Assignee's Signature

WITNESSED BY:

.....
Signature of Witness
Name and address of Witness:
Gisela van der Weydeff
Adolf-Damaschke-Str. 18
D-04668 Grimma

.....
Signature of Witness
Name and address of Witness:
André Schinow
Hertz-Hammerbacher-Str. 17
D-14469 Potsdam

PTO/SB/44 (09-07)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : US 6,553,609 B2

APPLICATION NO.: 09/836,885

ISSUE DATE: : April 29, 2003

INVENTOR(S) : Dieter Tremmel et al.

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:

On the front page of the patent, add the name of each of the following three (3) identified inventors:

(76) Inventors:

Barbara Kissich
Sandstrasse 22
91080 Spardorf
Germany

Udo Utz
Herterstrasse 45
71254 Ditzingen
Germany

Stanislav Massini
Ziegelstrasse 28
90579 Langenzenn
Germany

MAILING ADDRESS OF SENDER (Please do not use customer number below):

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.

American LegalNet, Inc.
www.Forms*Workflow*.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

MAILED

AUG 27 2009

Director's Office
Group 3700

In re Patent No. 6,553,609
Issue Date: 4/29/03
Appl No.: 09/836,885
Filed: April 17, 2001
For: Apparatus for Floor Cleaning

DECISION GRANTING PETITION
37 CFR 1.324

This is a decision on the petition filed June 20, 2008 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Joseph J. Hail, III
Supervisory Patent Examiner
Art Unit 3723
Technology Center 3700

RANKIN, HILL & CLARK LLP
925 EUCLID AVENUE, SUITE 700
CLEVELAND, OH 44115-1405

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

AUG 27 2009

Director's Office
Group 3700

In re Patent No. 6,553,609	:	
Issue Date: 4/29/03	:	**DECISION GRANTING**
Appl No.: 09/836,885	:	**PETITION**
Filed: April 17, 2001	:	*37 CFR 1.324*
For: Apparatus for Floor Cleaning	:	

This is a decision on the petition filed June 20, 2008 to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Joseph J. Hail, III
Supervisory Patent Examiner
Art Unit 3723
Technology Center 3700

RANKIN, HILL & CLARK LLP
925 EUCLID AVENUE, SUITE 700
CLEVELAND, OH 44115-1405

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

DEC 19 2006

Technology Center 2100

David J. Thibodeau, Jr.
HAMILTON, BROOK, SMITH &
REYNOLDS, P.C.
530 Virginia Road
Concord, MA. 01742-9133

In re Application of:
Phillip A. Cousins
Application No. 09/836,886
Filed: April 17,2001
For: DATA PROCESSING SYSTEM FOR MAPPING A COLLABORATIVE REASONING PROCESS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed October 20, 2006.

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 withdrawal is the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 10.40(a) further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the U.S. Patent and Trademark Office (Office) will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Michelle R. Eckert for

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

cc: Mr. Phillip A. Cousins
1521 Alton Road, #804
Miami Beach, FL. 33139-3301

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,890	04/17/2001	George Prince	607797-017	5177

46188 7590 05/10/2010
Nixon Peabody LLP
P.O. Box 60610
Palo Alto, CA 94306

EXAMINER
NANO, SARGON N

ART UNIT	PAPER NUMBER
2457	

MAIL DATE	DELIVERY MODE
05/10/2010	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Nixon Peabody LLP
P.O. Box 60610
Palo Alto CA 94306

In re Application of: George PRINCE
Application No. 09/836,890
Filed: April 17, 2001
For: SYSTEM AND METHOD FOR PROVIDING DIGITAL MESSAGING SERVICES

DECISION SUA SPONTE WITHDRAWING HOLDING OF ABANDONMENT

This is a decision, *sua sponte*, withdrawing the holding of abandonment of the above-identified application.

This application is held abandoned for failure to timely file a reply to the Board of Patent Appeals and Interferences Decision mailed February 19, 2010. The Notice of Abandonment was mailed on April 27, 2010.

A review of the file record indicates that the examiner was sustained in part, the Decision affirmed the rejection(s) against independent claim **1 and dependent claims 3-4, 5-7 and 22,** but reversed all rejections against claim **21** dependent thereon. There are no allowed claims in the application and the time for seeking court review has passed without such review being sought. The examiner, however, did not (1) Convert the dependent claims into independent forms or (2) Set a 1-month time limit in which the appellant may rewrite the dependent claim in independent format. On April 27, 2010, a Notice of Abandonment was mailed for failure to timely file a proper response to the Decision of February 19, 2010. Thus, the Notice of Abandonment was **premature**.

Although no petition or request to withdraw the holding of abandonment in this application has been filed, the **holding of Abandonment is hereby withdrawn**.

The application is being forwarded to the examiner for proper treatment of the application following the Decision of February 19, 2010.

/Kim Huynh/

Kim Huynh, SPRE/QAS
Technology Center 2400
Network, Multiplexing, Cable and Security
571-272-4147

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

THEODORE W. OLDS
CARLSON GASKEY & OLDS
400 W. MAPLE ROAD, STE 350
BIRMINGHAM, MI 48009

COPY MAILED

MAR 29 2002

OFFICE OF PETITIONS

In re Application of	:	
Charles Hopson et al	:	
Application No. 09/836,892	:	DECISION REFUSING 37 CFR
Filed: April 17, 2001	:	1.47(a) STATUS
Attorney Docket No. 60,130-726	:	

This is in response to the petition under 37 CFR 1.47(a), filed April 17, 2001.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

As to item (1), the applicable statute (35 USC 116) requires that a "diligent effort" have been expended in attempting to find or reach the nonsigning inventor. See MPEP 409.03(a). The showing currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate inventor Barry, such that the declaration can be accepted under 37 CFR 1.47(a).

Where inability to find or locate a named inventor(s) is alleged, 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 to locate the inventor. The statement(s) of fact 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.

In the instant case, petitioner states that several attempts were made to contact nonsigning inventor Barry at his address and that letters and copies of the application were sent to Mr. Barry on January 12, 2001 and February 12, 2001. Petitioner has not indicated what attempts were made to reach nonsigning inventor Barry, only that "several attempts were made," nor has petitioner submitted copies of the correspondence mailed to Mr. Barry indicating what was actually mailed or as to whether these mailings ever reached the intended addressee. Since it is presumed that the correspondence was returned as undeliverable, petitioner must state what attempts were made to locate the inventor after the mailing of the letters and copies of application sent to Mr. Barry on January 12, 2001 and February 12, 2001. At the very least, a search should be made of the telephone directories and any regional or national registry(s). Copies of the results of the search must be referred to in any renewed petition. See MPEP 409.03(d).

Additionally, petitioner should state what inspection of the assignee's personnel records reveals as to a current address, forwarding address, or an address of the nearest living relative. What does inspection of the phone directories for those address locations reveal? Has any of inventor Barry's former co-workers kept in touch with him? Has petitioner attempted to locate inventor Barry on the Internet? If so, what were the results of the Internet search? If inventor Barry is located, then a complete copy of the application papers (specification, claims, drawings, oath, etc.) should be mailed to Mr. Barry's address, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that inventor Barry cannot be reached or has refused to join in the application. The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein.

If inventor Barry is located and the inventor orally refuses to join in the application, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

In order to expedite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47(a) by facsimile transmission to the telephone number indicated below and to the attention of Wan Laymon.

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

By mail: U.S. Patent and Trademark Office
Mail Stop DAC
P.O. Box 2327
Arlington, VA 22202

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision should be directed to Wan Laymon at (703) 306-5685.

Frances Hicks

Frances Hicks
Lead 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. 6

CARLSON GASKEY & OLDS
400 W MAPLE ROAD
SUITE 350
BIRMINGHAM MI 48009

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AUG 0 5 2002

OFFICE OF PETITIONS

In re Application of	:
Charles Hopson et al	:DECISION NOTING JOINDER OF
Application No. 09/836,892	:INVENTOR AND PETITION UNDER
Filed: April 17, 2001	:37 CFR 1.47(a) MOOT
Atotrney Docket No. 60,130-726	:

Papers filed on June 19, 2002 in response to a "Decision Refusing Status Under 37 CFR 1.47(a)," mailed March 29, 2002, included a Declaration signed by previously nonsigning inventor David M. Barry in compliance with 37 CFR 1.63.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is moot; this application does not have any rule 1.47(a) status and no such status should appear on the file wrapper. This application need not be returned to this office for any further consideration under 37 CFR 1.47(a).

This application is being forwarded to Technology Center AU 2834 for examination in due course.

Inquiries related to this decision may be addressed to the undersigned at (703) 305-8680.

Frances Hicks
Lead 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. 11

E. I. du Pont de Nemours and Company
Legal Patent Records Center
Barley Mill Plaza 25/1128
4417 Lancaster Pike
Wilmington, DC 19898

COPY MAILED

JAN 1 6 2003

OFFICE OF PETITIONS

In re Application of :
Michael B. D'Amore, et al. :
Application No. 09/836,920 : ON PETITION
Filed: April 18, 2001 :
Attorney Docket No. CL1241 US DIV :

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 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 Restriction Requirement mailed November 6, 2001, which set a shortened statutory period for reply of thirty (30) days. 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.

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.

37 CFR 1.137(d) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. Since the application is not a utility or plant application filed before June 8, 1995, a terminal disclaimer is not required. Accordingly, the terminal disclaimer filed with the instant petition is unnecessary. Therefore, the fee of $110.00 will be refunded to petitioner in due course.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $920.00 extension of time submitted with the petition on December 2, 2002 was subsequent to the maximum extendable period for reply, the extension of time filed with the instant petition is unnecessary and the fee will be credited to petitioner's deposit account.

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 1600, Art Unit 1621.

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
WASHINGTON, D.C. 20231
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Paper No. 5

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

MAILED

JAN 0 4 2002

Technology Center 2100

In re Application of: Luosheng Peng	)	
Application No.: 09/836,972	)	
Filed: April 16, 2001	)	**DECISION ON REQUEST FOR**
For: APPARATUS AND METHODS FOR	)	**WITHDRAWAL AS ATTORNEY**
MANAGING CACHES ON A	)	
MOBILE DEVICE	)	

This is a decision on the Request To Withdraw from Representation filed November 30, 2001.

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 withdrawal 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**.

Because no request was made for a change in correspondence address, all future communications from the Office will ***continue to be directed to the above-listed address*** until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Pinchus M. Laufer

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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JAN 22 2002

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2100

Paper No. 7

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

In re Application of: Luosheng Peng	)	
Application No.: 09/836,972	)	
Filed: April 16, 2001	)	**DECISION ON REQUEST FOR**
For: APPARATUS AND METHODS FOR	)	**WITHDRAWAL AS ATTORNEY**
MANAGING CACHES ON A	)	
MOBILE DEVICE	)	

This is a decision on the Request To Withdraw from Representation filed January 11, 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 effective date of withdrawal 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.

Due to an oversight a request for a change of correspondence address was not filed with the original request for withdrawal. The new request clarifies that a change of correspondence address is requested. The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOSEPH D. KUBORN
ANDRUE, SCEALES, STARKE,&SAWALL
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

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SEP 25 2006
OFFICE OF PETITIONS

In re Application of Flach :
Application No. 09/837,008 : Decision on Petition
Filing Date: April 18, 2001 :
Attorney Docket No. 5024-00064 :

This is a decision on the petition under 37 CFR 1.137(a), filed August 3, 2006, 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 under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

Facts:

The application was filed on April 18, 2001.

The application was published on October 25, 2001.

A petition under 37 CFR 1.138(c), power of attorney, and change of address were filed on January 10, 2002. The papers were intended to for application no. 09/873,008. The papers included the correct application number - 09/873,008. The papers were incorrectly entered as part of the instant application.

A "Decision Granting Petition under 37 CFR 1.138(c)" was mailed to an incorrect address on January 16, 2002.

A Notice of Abandonment was mailed to an incorrect address on August 1, 2002.

Discussion:

Petitioner contends the application has not been expressly abandoned. The Office agrees.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Since the petition has been granted under 37 CFR 1.181, petitioner's request to have the petition considered under 37 CFR 1.137(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee of $500 will be credited back to petitioner's deposit account.

Technology Center Art Unit 2661 will be informed of the instant decision and the application will be examined in due course.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

#5
DW

UNITED STATES PATENT AND TRADEMARK OFFICE

OCT 29 2001

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Harter, Secrest and Emery, LLP
1600 Bausch & Lomb Place
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OCT 29 2001
Office of the Director
Group 3600

Paper No. 5

In re application of
William Whitehead
Application No. 09/837,039
Filed: April 18, 2001
For: ILLUMINATING WEATHERSEAL

: **DECISION ON PETITION**
: **TO MAKE SPECIAL**
: **(ACCELERATED EXAMINATION)**

This is in response to the petition filed on May 18, 2001 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references.

Since all of the requirements for special status under MPEP § 708.02 VIII have been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona fid*** effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

SUMMARY: Petition to Make Special **GRANTED**.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM: 10/27/01

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Paper No. 4

Withrow & Terranova, P.L.L.C.
P.O. Box 1287
Cary, North Carolina 27512

In re Application of: David Hadden et al.	)	
Application No. 09/837,076	)	**DECISION ON PETITION FOR**
Filed: April 18, 2001	)	**ACCELERATED EXAMINATION**
For: PERFORMANCE-BASED	)	**UNDER M.P.E.P. §708.02(VIII)**
TRAINING ASSESSMENT	)	

This is a decision on the petition, filed September 4, 2001 under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02(VIII): Accelerated Examination, to make the above-identified application special.

M.P.E.P. §708.02, Section VIII which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d) states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i);

(b) Presents all claims directed to a single invention, ...

(c) Submits a statement(s) that a pre - examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;

(d) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(e) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111(b) and (c), how the claimed subject matter is patentable over the references.

Applicant's submission meets all the criteria set out above, accordingly, the Petition is **GRANTED**.

The application file is being forwarded to the Examiner of Record for accelerated examination according to the procedures set forth in M.P.E.P. §708.02, Section VIII.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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OCT 01 2002

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TECHNOLOGY CENTER 3600

WITHROW & TERRANOVA, PLLC
PO BOX 1287
CARY, NC 27512

In re Application of
David D. Hadden
Application No. 09/837,076
Filed: April 18, 2001
For: PERFORMANCE-BASED TRAINING ASSESSMENT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicant's petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on September 11, 2002.

The petition is **DISMISSED.**

A review of the file record reveals that An Office action was mailed to the firm of Withrow & Terranova on February 12, 2002. Since no response to the February 12, 2002 Office communication was filed, the application was held abandoned in the Notice of Abandonment mailed August 23, 2002.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include a copy of the list of **all** responses in the practitioner's office with the due date of and around May 12, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993). The petitioner has supplied the docket

report for the above reference application only. This fails to comply with requirement (3) indicated above.

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 1.181."

Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231, and inquiries relative to this decision may be directed to Special Programs Kenneth Dorner at (703) 308-0866. No fee is required for such a petition.

Kenneth Dorner, Special Program Examiner
Patent Technology Center 3600
(703) 308-0866
Facsimile No.: (703) 605-0586

KD/dew: 09/20/02

UNITED STATES PATENT AND TRADEMARK OFFICE
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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Withrow & Terranova, PLLC
P.O.Box 1287
Cary, NC 27512

In re Application of
David D. Hadden et al.
Application No. 09/837,076
Filed: April 18, 2001
For: PERFORMANCE-BASED TRAINING ASSESSMENT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on October 16, 2002. The delay in treating this petition is sincerely regretted.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to respond to the Office action mailed February 12, 2002.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of May 12, 2002. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Applicant's petition submits a statement that the applicant did not receive the above-noted Office action. Applicant also attests to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered as being due was also submitted. This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions withdraw the abandonment, return the application to pending status and to redate and remail the Office action of February 12, 2002 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.

Telephone inquiries relative to this decision should be directed to me at the number below.

Steven N. Meyers, Special Program Examiner
Patent Technology Center 3600
(703) 308-3868
Facsimile No.: (703) 605-0586

SM: 2/6/03

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Alexandria, VA 22313-1450
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gm

Mailed: 12-14-06

In re Application of	:	DECISION
James M. Sheppard, Jr.	:	GRANTING
Serial No. 09/837,094	:	PETITION
Filed: April 18, 2001	:	
For: JACQUARD OR DOBBY WOVEN TEXTILE WITH GRAPHIC IMPRESSION AND A METHOD OF MAKING THE SAME	:	

This is a decision on the November 22, 2006, "Petition Under 37 CFR 1.181" requesting withdrawal of the dismissal of the appeal and resulting abandonment of the instant application.

The petition is before the Director of Technology Center 1700 for consideration.

The petition is **GRANTED** for the reasons below.

BACKGROUND

An appeal brief was first filed on May 15, 2006, and held to be non-compliant under 37 CFR 41.37(c)(1)(v). The examiner deemed the "Summary of claimed subject matter" to be non-compliant for failing to be limited to the claimed subject matter and for failing to identify where each claimed feature is located in the specification.

Applicant responded with an amended appeal brief on August 3, 2006. Applicant declined to remove the subject matter objected to by the examiner from the summary, but did provide reference to a table provided as an attachment to the brief which mapped the claims against the specification.

The examiner held the amended brief to be non-compliant, again for not being limited to the claimed subject matter, and additionally because the table was not located within the summary. The examiner then dismissed the appeal under 37 CFR 41.37(d), and abandoned the application on November 7, 2006.

The instant petition was timely filed on November 22, 2006.

DECISION

The relevant sections of 37 CFR 41.37(c) read as follows:

> (1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:
>
> (v) Summary of claimed subject matter . A concise explanation of the subject matter defined in each of the independent 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. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The original appeal brief was held non-compliant for two related reasons which will be considered separately here. The first was that the summary was not limited to the claimed subject matter, but instead was related "to general information in the disclosure." In and of itself, this is generally not a proper reason to hold an appeal brief non-compliant. As noted in the Federal Register (Vol. 69, No. 155) when the current rules were published "[a]ppellant may include any other information of record which will aid the Board in considering the subject matter of each independent claim." Further, 37 CFR 41.37(c)(1)(v) does not specifically prohibit inclusion of additional material in addition to the concise explanation. So long as the summary contains a readily discernable concise explanation it may contain other information. Therefore, neither the original brief nor the amended brief can be properly deemed non-compliant for not being limited to the claimed subject matter.

The original brief was further held non-compliant for failing to identify where each claimed feature is located in the specification. As 37 CFR 41.37(c)(1)(v) requires an explanation of the independent claims with reference "to the specification by page and line number" this ground of non-compliance was appropriate. Applicant appears to have conceded this point by inclusion of the table.

Thus the original brief, particularly the summary, was properly held non-compliant only for failing to identify where the claimed features are located in the specification. The question then becomes whether the amended brief sufficiently corrects this deficiency.

The examiner held the amended brief non-compliant for not being limited to the claims and because the table was not located within the summary itself but rather as an attachment. As noted above, the inclusion of general background information is insufficient to render a summary non-compliant.

As to the location of the table, applicant argues in the petition that "the rule does not prohibit reference in this section of an appeal brief to a table that is physically located at a different place in the appeal brief." This is incorrect. 37 CFR 41.37(c) states "the brief shall contain the following items under appropriate headings and in the order indicated." A fair reading of the rule implies that the information required by each item must be physically located "under appropriate heading" and not elsewhere in the brief as it would then not be "in the order indicated."

Therefore the examiner was correct in holding the amended brief non-compliant only because the table was not located within the summary itself.

The question of the propriety of the abandonment must therefore be considered. 37 CFR 41.37(d) states:

> If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

Thus abandonment is appropriate upon filing a second non-compliant brief only if the second brief is non-compliant for reason(s) "stated in the notification," i.e., for the same reason(s) as the first brief. In the instant case the reason stated in the first notification was failing to identify where each claimed feature is located in the specification. Arguably, the amended brief is non-compliant for the reason stated in the notice, that is for failing to identify where each claimed feature is located in the specification. However, the failure in the first instance was a complete *lack* of such information, whereas the failure in the second instance was *misplacement* of the required information. It is equally arguable that this is *not* exactly the reason "stated in the notification."

As a matter of equity, the Office will not hold an application abandoned for failure to comply with a rule without first giving applicant a fair opportunity to so comply upon proper notice of the Office's interpretation of that rule. Here, applicant was first clearly informed that the provided table was misplaced along with the notice of abandonment, and hence had no opportunity to correct the problem. Abandonment of the application in such circumstances is inappropriate.

It is noted that the instant petition was filed along with a revised summary of claimed subject matter which incorporates the table and which satisfies the rules. Accordingly, the petition for withdrawal of abandonment and reinstatement of appeal is **GRANTED**. The application is hereby returned to pending status. An appeal brief has been timely filed in this application, therefore the case is being forwarded to the Examiner for treatment of the amended appeal brief of 08/03/06 and amended summary of the claimed subject matter of 11/22/06.

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

DOUGHERTY, CLEMENTS & HOFER
GREGORY N. CLEMENTS
1901 ROXBOROUGH ROAD
CHARLOTTE NC 28211

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MAIL Paper No. 3

JUN - 4 2004

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TECHNOLOGY CENTER 2600

EVAN R. SOTIRIOU
ARMSTRONG TEASDALE LLP
ONE METROPOLITAN SQUARE, SUITE 2600
ST. LOUIS, MISSOURI 63102-2740

In re Application of

Tazwell L. Anderson, Jr., et al.
Application No. 09/837128
Filed: April 18, 2001
For: ELECTRONIC HANDHELD AUDIO/VIEDO RECEIVER AND LISTENING/VIEWING DEVICE

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed March 29, 2004 under 37 CFR §1.102(d) to make the application special.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;
(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

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OFFICE OF PETITIONS

MAYER, BROWN, ROWE & MAW LLP
71 S. WACKER
CHICAGO, IL 60606

In re Application of

CHANG, Chia Ning (Sophia)
Application No. 09/837,217
Filed: April 19, 2001
Attorney Docket No. **01779784**

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 07, 2007.

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 Joseph A. Mahoney on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Chai Ning (Sophia) Chang at the address indicated below.

There are no outstanding office actions at this time.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **CHIA NING (SOPHIA) CHANG**
DEPARTMENT OF PLASTIC SURGERY
5 FU-HSING STREET
KWEI-SHEN, TA0-YUAN 333
TAIWAN, R.O.C.

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/837,217	04/19/2001	Chia Ning (Sophia) Chang	01779784

CONFIRMATION NO. 6921

OC000000025563205

26565
MAYER, BROWN, ROWE & MAW LLP
71 S. WACKER
CHICAGO, IL 60606

Date Mailed: 08/27/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/07/2007.

- 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.

Michelle R. Eason

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199

FORMER ATTORNEY/AGENT COPY

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OFFICE OF PETITIONS

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Patent No. 7,456,750	:	
Popp, et al.	:	DECISION ON
Application No. 09/837,228	:	REQUEST FOR
Issue Date: November 25, 2008	:	RECONSIDERATION OF
Filed: April 19, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	AND NOTICE OF INTENT TO
2100.0071-00	:	ISSUE CERTIFICATE OF
	:	CORRECTION

This is in response to the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d), filed January 26, 2009. Patentees request that the determination of patent term adjustment be corrected from one hundred sixty-nine (169) days to six hundred thirty seven (637) days.

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

Patentees are given **THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer**, from the mail date of this decision to respond. No extensions of time will be granted under 37 CFR 1.136.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred seventy-two (272) days.

BACKGROUND

This application was filed on April 19, 2001. On April 19, 2005, a request for continued examination was filed. On November 25, 2008, the application matured into U.S. Patent No. 7,456,750 with a revised patent term adjustment of 169 days. The Office determined that the 365 days of Office delay pursuant to 35

U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b)[1,2] overlaps with the 669 days of Office delay pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a)(1)[3] accorded prior to the issuance of the patent. A period of adjustment of 634 days of Office delay subsequent to the filing of the request for continued examination was entered pursuant to 37 CFR 1.702(e). No additional days of patent term adjustment were entered at issuance under the three-year pendency provision. The patent issued with a revised patent term adjustment of 169 days (669 days of Office delay - 500 days of applicant delay).

On January 26, 2009, patentees timely submitted this request for reconsideration of patent term adjustment (with required fee). In part, patentees dispute the reduction of 103 days associated with the filing of the "Declaration and Power of Attorney" on

---

[1] Pursuant to 35 U.S.C. 154(b)(1)(B), 37 CFR 1.702(b) provides, in pertinent part, that:

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

[2] As of the filing of the RCE on April 19, 2005, the application was pending three years and 365 days.

[3] 37 CFR § 1.702, provides grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

> (a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:
>
> (1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

August 15, 2008, after the mailing of the notice of allowance. Specifically, patentees state:

> Patentee filed the courtesy copy of the Declaration and Power of Attorney in response to an express request by the Examiner to submit a copy of the originally-filed Declaration and Power of Attorney because the USPTO's copy was apparently no longer present in the USPTO's application file.
>
> The USPTO has apparently improperly viewed the submission of the courtesy copy as a "failure to engage in reasonable efforts to conclude prosecution...of the application," and has reduced the patent term adjustment by 103 days. See 37 C.F.R. 1.704(a)
>
> Patentee respectfully submits that such a reduction is improper because a supplemental paper submitted in response to an Examiner's express request does not constitute a failure to engage in reasonable prosecution efforts. See 37 C.F.R. 1.704(c)(8)(indicating that supplemental replies and other papers expressly requested by the Examiner do not trigger a reduction in a patent term adjustment).

Excerpt from "Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d)", filed January 26, 2009, pgs. 2-3.

Patentees further assert that the correct number of days of Patent Term Adjustment is 637 days under the court's interpretation of the overlap provision as set forth in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Specifically, patentees state that:

> According to Wyeth, the time period beyond three years of pendency of an application counts toward patent term adjustment for every day that does not occur on the same date as a USPTO delay based on a reason other than the pendency being greater than three years. See Wyeth at 8 ("the only way that periods of time can 'overlap' is if they occur on the dame day").
>
> Patentee respectfully submits that the USPTO has failed to provide the '750 patent with 365 days of accrued patent term adjustment based on the period of time between three years after the filing date and the date on which Patentee filed a Request for Continued Examination (RCE).

Excerpt from "Request for Reconsideration of Patent Term Adjustment under 37 C.F.R. 1.705(d)", filed January 26, 2009, p. 3-4.

OPINION

At the outset, patentees' assertion that the 103 days of reduction to the patent term adjustment pursuant to 37 CFR

1.704(c)(8)[4] for the filing of Declaration and Power of Attorney on August 15, 2008, after the mailing of the notice of allowance, was not warranted is well taken. However, this conclusion is based on reasons different from those stated by patentees. The reasoning is different as the reduction was pursuant to 37 CFR 1.704(c)(10), not 1.704(c)(8) as argued by patentees. On resubmission of the declaration, patentees made a *prima facie* showing in the form of an itemized and date-stamped postcard that a Declaration and Power of Attorney was filed on July 23, 2001. A review of the record supports a conclusion that one page of the originally submitted declaration was lost by the Office. Under the circumstances of the resubmission, it is appropriate to treat the 2-page declaration as submitted on July 23, 2001, prior to the mailing of the Notice of Allowance on July 23, 2008. As such, the resubmission of the lost declaration on August 15, 2008, did not constitute a failure to engage within the meaning of 37 CFR 1.704(c)(10). Accordingly, the 103 day reduction to the patent term adjustment is being removed.

With regard to patentees' interpretation of the period of overlap, the Office has considered it, but finds it inconsistent with the Office's interpretation of the overlap provision, 35 U.S.C. 154(b)(2)(A). 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the

---

[4] 37 CFR 1.704 (c)(8) provides that:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

> 8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f)*[5] *and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> 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 *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 56366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004).

Further, as stated in the *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of*

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[5] Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

35 U.S.C. 154(b)(2)(A), the Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (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 relevant period 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).

This interpretation is consistent with the statute. Taken together the statute and rule provide that to the extent that periods of delay attributable to grounds specified in 35 U.S.C. 154(b)(1) and in corresponding §1.702 overlap, the period of adjustment granted shall not exceed the actual number of days the issuance of the patent was delayed.

In this instance, the relevant period 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) is the period during which the application was pending before the Office beginning on the application filing date under 35 U.S.C. 111(a), April 19, 2001, and ending on the date of filing of a request for continued examination (RCE), April 19, 2005,(not including any other periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)). The relevant period ends with the filing of the RCE as the three-year time frame specified in 35 U.S.C. 154(b)(1)(B) does not include the period subsequent to the filing of the RCE. 35 U.S.C. 154(b)(1)(B)(i).

Thus, only the 26 days of patent term adjustment accorded prior to the filing of the request for continued examination pursuant to 37 CFR 1.702(a)(1) is considered in determining overlap. The 634 days for Office delay under 37 CFR 1.702(e) occurring subsequent to the filing of the request for continued examination is not considered.

All of the 365 days of patent term adjustment under 37 CFR 1.702(b) overlap with the 26 days of patent term adjustment under 37 CFR 1.702(a)(1). 669 days (26 + 634) is the actual number of days issuance of the patent was delayed.

CONCLUSION

In view thereof, the patent term adjustment indicated on the patent should be two hundred seventy-two (272) days (669 (26 + 643) days of Office delay - 397 (31 + 90 + 90 + 59 + 91 + 36) days of applicant delay).

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **272 days**.

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

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,456,750 B2

DATED : Nov. 25,2008

INVENTOR(S) : Popp, et al.

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (169) days

Delete the phrase "by 169 days" and insert – by 272 days--

09/837235

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/2/08

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction on Patent No.: 7037894

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

Please complete this form and return with file, within 7 days to:
Palm location 7580, Certificates of Correction Branch – South Tower – 9A22
If response is for an IFW, return to employee (named below) via PUBSCofC Team in MADRAS.
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:
Certificate of correction filed 4/16/2009 deleting Paul B. Marshall, Munich (DE) from the list of inventors is approved.

SPE

1652
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

SEP - 6 2001

#4

In re Application of
Gennadi Finkelshtain, et al.
Serial No.: 09/837,278
Filed: April 19, 2001
For: SELF-MANAGING ELECTROCHEMICAL FUEL CELL AND FUEL CELL ANODE

DECISION ON PETITION TO MAKE SPECIAL UNDER 37 C.F.R. 1.102 – V & VI - ENERGY

This is a decision on the petition filed on August 01, 2001, requesting that the above identified application be granted Special Status under Sections 37 C.F.R. 1.102 and M.P.E.P 708.02 VI.

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

The petition is GRANTED.

Richard V. Fisher

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

Dr. Mark Friedman, Ltd.
C/O Anthony Castornia
Suite 207
2001 Jefferson Davis Highway
Arlington, VA 22202

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KEVIN KAWAKITA
5812 TEMPLE CITY BL. #100
TEMPLE CITY, CA 91780

COPY MAILED

OCT 16 2006

OFFICE OF PETITIONS

In re Application of :
KEVIN KAWAKITA :
Application No. 09/837,314 :
Filed: April 19, 2001 :
Title of Invention: :
GRAVITY-FED LIQUID CHEMICAL :
DISPENSER BOTTLE :

This is a decision on the petition under 37 CFR 1.137(b), filed June 12, 2006, to revive the above-identified application.

The petition is **DISMISSED.**

Any further petition to revive the above-identified application (under 37 CFR 1.137(a)), 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 "Request for Reconsideration of Petition under 37 CFR 1.137. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Background

The above-identified application became abandoned for failure to timely reply to the Notice of Fee Deficiency ("Notice"), mailed December 14, 2004. The Notice indicated that Applicant's reply previously filed on August 23, 2004, was not fully responsive to the Notice of Non-Compliant Amendment mailed June 2, 2004. The Notice required a substitute specification and a balance of $176.00 for the presentation of excess claims. The Notice set a one (1) period for reply. Extensions of time under 37 CFR 1.136(a) were available.

Applicant timely filed a reply on January 14, 2005; however, the reply did not include the excess claims fee. In fact, as was noted in the Notice of Abandonment, Applicant stated on page 8 of the reply that he was not submitting the extra claims fee in

order to avoid a double patenting rejection when he filed a continuation-in-part ("CIP") application.

No complete reply having been received, the above-identified application became abandoned January 15, 2005. A Notice of Abandonment was mailed on August 2, 2005.

The instant petition

Applicant files the instant petition on June 12, 2006, and fees including the petition fee and an additional $225.00.

Office records indicate that a refund of $225.00 was returned to Applicant on June 14, 2006. Accordingly, the $176.00 in excess claim fees has yet to be submitted to this Office.

Applicable Law, Rules and MPEP

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed); (**2**) the petition fee required by 37 CFR 1.17(m); (**3**) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (**4**) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (**1**).

As to item (**1**), Applicant has not submitted a reply to the Notice. The $225.00 filed by Applicant was returned to Applicant.

Applicant must re-submit the excess claims fees ($176.00).

Applicant is further advised that this Office (the PTO), provides assistance to inventors, and Applicant is advised to contact the Office of Independent Inventors, at 703-306-5568, and the Patent Assistance Center, at 1-800-786-9199, for assistance in prosecuting his patent application.

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KEVIN KAWAKITA
5812 TEMPLE CITY BL. #100
TEMPLE CITY, CA 91780

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MAY 18 2007

OFFICE OF PETITIONS

In re Application of	:	
KEVIN KAWAKITA	:	
Application No. 09/837314	:	ON PETITION
Filing or 371(c) Date: 04/19/2001	:	
Title of Invention:	:	
GRAVITY-FED LIQUID	:	
CHEMICAL DISPENSER BOTTLE	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), November 20, 2006. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the Office communication, mailed December 14, 2004. The Office communication required additional claim fees in the amount of $176.00, and set a one (1) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No complete and proper reply having been received, the application became abandoned on January 15, 2005. A Notice of Abandonment was mailed August 2, 2005.

Fee Background

The application was filed on April 19, 2001. On April 3, 2003, the Office calculated the filing fees to be $380 (basic) and $108 (Total Claims in Excess of 20 fee). Applicant had submitted $453. Of the $453, $355 was coded to the basic filing fee; $90 was coded to additional claims fee (10 at $9 each), $8 was coded as a suspended amount.

On April 24, 2003, Applicant submitted $10, which was entered as a miscellaneous fee, and not applied to the above noted deficiency. **The $10 and the $8 should have been coded as Total Claims in Excess of 20 fee.**

The application was subsequently forwarded for examination, and Applicant filed an amendment on June 25, 2004. The amendment was noncompliant. Applicant was so notified in a Notice of Non-Compliant Amendment mailed July 22, 2004. Applicant filed a second Amendment on August 23, 2004.

The December 14, 2004 Office communication

In response to the August 23, 2004 Amendment, this Office mailed a Notice of Fee Deficiency on December 14, 2004, requiring a balance of $176 for the presentation of excess claims, and also required a Substitute Specification. As noted above, Applicant failed to reply to the Office communication and the application became abandoned.

The June 12, 2006 petition

Applicant filed a petition to revive the application on June 12, 2006, which was dismissed in a Decision mailed October 16, 2006. Applicant was required to submit $176.00 in response to the Office communication.

The present renewed petition

Applicant files the present renewed petition and includes $176.00.

The Office noted in a Notice of Fee Due, filed in the present application on November 20, 2006, that Applicant owed this office $300.00 under fee code 2201 (Independent Claims in Excess of Three). Of the $176.00 submitted by Applicant, this Office applied $100 to fee code 2201 on November 20, 2006. The Notice further noted receipt of $76.00, which was placed in a holding fee code.

Applicant files the present renewed petition to revive the application and asserts that he complied with the Office communication mailed December 14, 2004, when he submitted $176.00.

Conclusion

Applicant has complied with the Office communication mailed December 14, 2004, by submitting the $176.00 required in the Notice.

This application is being forwarded to Technology Center Art Unit 3754 for processing of the response (fees), and for continued examination in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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

Mailed: JUL 7 [illegible] rvk

Paper Number: 12

In re application of
W.G. Don Korff
Serial No. 09/837,317
Filed: April 19, 2001
For: DEVICE FOR LOCATING AND RETRIEVING SMALL ARTICLES

DECISION ON PETITION

This is a response to the PETITION TO REINSTATE TO ACTIVE STATUS, filed May 27, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of April 22, 2003, for failure to file a proper response to the Office letter mailed September 13, 2002 be withdrawn. The petitioner asserts that the Office letter was not received by the applicant.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

A review of the petitioner's evidence indicates that the request cannot be granted. As set forth in MPEP 711.03(c) II- PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION :

> "The showing required to establish the nonreceipt of an Office communication **must** include a statement from the practitioner stating that 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 the practitioner's statement. " (emphasis added)

The evidence presented is insufficient to establish that the above noted Office letter was not received by the petitioner. The evidence provided includes a statement by the petitioner that the Office action (i.e. final rejection) dated September 13, 2002 has indeed never been received.

However, the instant petition does not contain a statement attesting that a search of the file jacket and docket records was made, and the result of such search revealed that the Office letter dated September 13, 2002 was not received and it fails to submit a copy of the docket record where the nonreceived Office letter would have been entered had it been received.

Accordingly, this application stands abandoned.

The Petition is **DENIED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

W.G. DON KORFF
13774 ELDRIDGE AVE.
SYLMAR, CA 91342

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mailed: AUG 27 2003

BC
Paper Number 13

In re application of	:	
W.G. Don Korff	:	
Serial No. 09/837,317	:	DECISION ON
Filed: April 19, 2001	:	PETITION
For: DEVICE FOR LOCATING AND RETRIEVING SAMLL ARTICLES	:	

This is a response to the REQUEST FOR RECONSIDERATION OF THE PETITION DECISION mailed on July 7, 2003, which denied Applicant's PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE PTO COMMUNICATION, MPEP 711.03(c) PART II, filed May 27, 2003. Applicant's original Petition was denied because it lacked evidentiary docket records indicating that the Office communication of September 13, 2002 was not received. The REQUEST FOR RECONSIDERATION includes Applicant's docket records as evidence of non-receipt of the September 13, 2002 Office communication.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

The evidence presented is sufficient to establish that the Final Rejection of September 13, 2002 was not received by Applicant. The evidence provided the previously missing Applicant's application docket records where the letters would have been posted had they been timely received, along with a statement that the Applicant searched all written communications from the USPTO.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the above noted Final Rejection to the correspondence address and restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

W.G. Don Korff
13774 Eldridge Ave.
Sylmar, CA 91342

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 14

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

COPY MAILED

APR 0 6 2004

OFFICE OF PETITIONS

In re Application of	:
Robert M. Scribner et al	: DECISION ON PETITION
Application No. 09/837,350	: UNDER 37 CFR 1.78(a)(3)
Filed: April 28, 2001	:
Attorney Docket No. 1759.15103	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 19, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

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

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

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1).

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of

the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed fails to state the relationship of Application No. 08/788,786, filed January 23, 1997, to the instant application.

Accordingly, before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment[1] stating the relationship of the prior-filed application to the instant application is required.

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

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

By hand: Customer Window located at:

2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

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

Any questions concerning this matter may be directed to the undersigned at (703) 305-8680 .

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

[1] *Note* 37 CFR 1.121

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 19

PATRICIA A. LIMBACH
RYAN KROMHOLZ & MANION, S.C.
P.O. BOX 26618
MILWAUKEE, WI 53226

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SEP 21 2004

OFFICE OF PETITIONS

In re Application of	:	
Robert M. Scribner et al	:	
Application No. 09/837,350	:	DECISION ON PETITION
Filed: April 18, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1759.15103-CON		

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed May 3, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on April 18, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

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

This application is being forwarded to Technology Center Art Unit 3743 for appropriate action on the amendment filed May 3, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Karen Creasy

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

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

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DEC 0 8 2004

OFFICE OF PETITIONS

INTERNATIONAL PAPER COMPANY
1422 LONG MEADOW ROAD
TUXEDO, NY 10987

In re Application of :
Richard F. Rudolph et al :
Application No. 09/837,351 :
Filed: April 17, 2001 :
Attorney Docket No. IP6078 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 22, 2004, 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 to File Missing Parts of Nonprovisional Application (Notice) mailed June 13, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 14, 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 the Initial Patent Examination Unit.

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

cc:

Richard C. Stewart, II
International Paper Company
6285 Tri-Ridge Blvd.
Loveland, OH 45140

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
767 THIRD AVENUE
25TH FLOOR
NEW YORK NY 10017-2023

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SEP 1 9 2002

OFFICE OF PETITIONS

Applicant: Koji Kato et al.
Appl. No.: 09/837,357
Filing Date: April 13, 2001
Title: Electronic Camera
Attorney Docket No.: 01242/LH
Pub. No.: US 2002/0012061 A1
Pub. Date: January 31, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on February 15, 2002, via facsimile transmission for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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

AT&T CORP.
P O BOX 4110
MIDDLETOWN, NJ 07748

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SEP 13 2005

OFFICE OF PETITIONS

In re Application of	:	
Wei Lin	:	
Application No. 09/837,381	:	DECISION GRANTING PETITION
Filed: April 19, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. IDS 2000-672	:	

This is a decision on the petition, filed September 6, 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 July 27, 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 2662 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

---

[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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P.O. BOX 4110
MIDDLETOWN NJ 07748

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JAN 24 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Wei Lin	:	
Application No. 09/837,381	:	
Filed: April 19, 2001	:	
Attorney Docket No. IDS 2000-672	:	

This is a decision on the petition, filed January 17, 2006, 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 27, 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) 272-3208.

The examiner of Technology Center AU 2662 will consider 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 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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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GREGORY S. BERNABEO, ESQ.
SYNNESTVEDT & LECHNER LLP
2600 ARAMARK TOWER
1101 MARKET STREET
PHILADELPHIA, PA 19107-2950

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FEB 03 2005

OFFICE OF PETITIONS

In re Application of	:	
Etgen et al.	:	
Application No. 09/837,437	:	ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. RSW9-2001-0006-US1	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 21, 2005, 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 May 5, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on August 6, 2004.

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 2100 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

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

JIANQ CHYUN
Intellectual Property Office
7F-1,No. 100, Roosevelt Rd.,
Sec. 2
Taipei 100 CN CHINA

COPY MAILED

OCT 0 5 2005

OFFICE OF PETITIONS

In re Application of
Chi-Fang Huang
Application No. 09/837,465
Filed: April 19, 2001
Attorney Docket No. HUAN3009/EM/6712
Title: METHOD OF MANUFACTURING PRINTED-ON-DISPLAY ANTENNA FOR WIRELESS DEVICE

DECISION ON PETITION
UNDER 37 C.F.R. §1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR §1.28.

37 C.F.R. §1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

It is noted that the present petition has not been signed by the Petitioner.

37 C.F.R. §10.18(a) sets forth:

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, personally signed by such practitioner, in compliance with § 1.4(d)(1) of this chapter.

Since this petition has been submitted without a signature, the petition cannot be processed. For this reason, the petition under 37 CFR §182 is **DISMISSED**.

Any reply 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 reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.28(c)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and any renewed petition may be submitted by mail[1], hand-delivery[2], or facsimile[3].

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Notice regarding fees:

Petitioner will note that the fees which are required are the fees which are due on the date on which a grantable petition is submitted to the Office. Historically the fees that the USPTO charges for doing business increase at the beginning of each fiscal year (October 1). Please be advised that applicants should monitor the USPTO website for future updates whenever any necessary money is sent[4].

Paul Shanoski

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

cc: BACON & THOMAS PLLC
625 SLATERS LANE 4TH FLOOR
ALEXANDRIA VA 22314

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.
4 For more information, see www.USPTO.gov.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. None

JIANQ CHYUN
Intellectual Property Office
7F-1,No. 100, Roosevelt Rd.,
Sec. 2
Taipei 100 CN CHINA

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OCT 26 2005

OFFICE OF PETITIONS

In re Application of
Chi-Fang Huang
Application No. 09/837,465
Filed: April 19, 2001
Attorney Docket No. HUAN3009/EM/6712
Title: METHOD OF MANUFACTURING PRINTED-ON-DISPLAY ANTENNA FOR WIRELESS DEVICE

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.28(c)

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR §1.28.

37 C.F.R. §1.28(c)(2)(ii) sets forth that the party submitting the deficient payment must include:

(a) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a non-small entity;
(b) The small entity fee actually paid, and when;
(c) The deficiency owed amount (for each fee erroneously paid); and
(d) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

The original petition was submitted on August 4, 2004, and was dismissed via the mailing of a decision on October 5, 2005, as Petitioner did not sign the original petition.

With this renewed petition, submitted on October 21, 2005, the petition has been signed.

This notice pertains to 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 C.F.R. §1.28 is hereby accepted. The petition is **GRANTED** accordingly.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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JIE SHA
195 NORTH HARBOR DRIVE, SUITE 3504
CHICAGO, IL 60601

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JUL 2 5 2005

OFFICE OF PETITIONS

In re Application of :
Hongyi Zhou :
Application No. 09/837,497 :
Filed: April 18, 2001 :
Attorney Docket No. EGS10131US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 11, 2005, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 21, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 22, 2004.

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), it will be interpreted as the required statement. Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1020 extension of time fee submitted with the petition on May 11, 2005 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

The application matter is being referred to Technology Center 2100, Art Unit 2135 for further processing.

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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CHICAGO, IL 60601

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OFFICE OF PETITIONS

In re Application of :
Hongyi Zhou :
Application No. 09/837,497 : ON PETITION
Filed: April 18, 2001 :
Attorney Docket No. EGS10131US :

CORRECTED DECISION

This is a decision on the petition under 37 CFR 1.137(b), filed May 11, 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 21, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 22, 2004.

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), it will be interpreted as the required statement. Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1020 extension of time fee submitted with the petition on May 11, 2005 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

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

The application matter is being referred to Technology Center 2100, Art Unit 2135 for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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Jie Sha
Suite 3504
195 North Harbor Drive
Chicago IL 60601

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MAY 27 2005

OFFICE OF PETITIONS

In re Application of :
Hongyi Zhou :
Application No. 09/837,505 : DECISION ON PETITION
Filed: April 18, 2001 :
Attorney Docket No. EGS10130US :

This is a decision on the petition under 37 CFR 1.137(b), filed May 11, 2005, to revive the above-identified application.

This application became abandoned for failure to reply timely to the nonfinal Office Action mailed July 30, 2004, which set a three (3) month shortened statutory period to reply. Accordingly, this application became abandoned on October 31, 2004. A Notice of Abandonment was mailed on March 7, 2005.

In the present petition, petitioner requested an extension of time to reply within the first month and paid a $1,020.00 fee. 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. The extension of time fee is unnecessary and will be refunded because petitioner filed the petition subsequent to the maximum period obtainable for reply. Additionally, petitioner disclaimed the part of the term of any patent granted on the application that is equivalent to the period of abandonment of the application. A terminal disclaimer is not necessary because petitioner filed this utility application after June 8, 1995. See 37 CFR 1.137(d). Therefore, the Office has not entered the terminal disclaimer.

Furthermore, 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.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Accordingly, the petition is granted.

Petitioner stated that he enclosed a check with the petition in the amount of $1,630.00. However, the Office finance records show the Office received only $1,450.00.

As previously stated, the $1,020.00 extension of time fee is not necessary. This amount will be applied towards the payment of the $750.00 small entity fee for a petition under 37 CFR 1.137(b), leaving a balance of $270.00. Additionally, petitioner submitted a miscellaneous fee of $450.00, which is also unnecessary. Accordingly, petitioner will be credited the $450.00 miscellaneous fee and the $270.00 balance, for a total refund of $720.00. The $720.00 will be refunded by treasury check in due course.

The matter is being referred to Technology Center Art Unit 2145.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

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OFFICE OF PETITIONS

In re Application of :
Robert Uskali et al. :
Application No. 09/837,526 : ON PETITION
Filed: April 18, 2001 :
Attorney Docket No. PD05962AM :

This is a decision on the petition filed February 17, 2006 under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is **DISMISSED**.

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

A Final Office Action was mailed July 1, 2005 setting a three month period for reply. In response thereof, petitioners filed an amendment on September 26, 2005 which did not place the application in condition for allowance. Therein, an Advisory Action was mailed on November 7, 2005. No proper and timely reply to the office action having been filed, this application became abandoned October 4, 2005. Accordingly, a Notice of Abandonment was mailed January 31, 2006.

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[1]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.

Comes now petitioner with the instant petition to revive with a Request for Continued Examination (RCE), an Information Disclosure Statement as the submission required under 37 CFR 1.114 and a three month extension of time request.

The petition does not satisfy requirement (1) under 37 CFR 1.137(b) in that the filing of only the IDS with the RCE would be sufficient if there wasn't an outstanding office action. In this instance, the IDS, while a proper reply to the RCE cannot serve as a response to place the application in condition for allowance.

The only proper reply to a final Office action is an amendment placing the application in *prima facie* condition for allowance, a Notice of Appeal accompanied by the requisite fee, a Request for Continued Examination (RCE) accompanied by a proper submission, or a continuing application.

Petitioner must submit a proper reply to the final Office action mailed on July 1, 2005 or a proper submission under 37 CFR 1.114, with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay**.

With respect to the extension of time request, 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 $1020.00 extension of time fee submitted with the petition on February 17, 2006, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to counsel's deposit account no. 50-2117.

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

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

By FAX: (571) 273-8300

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 20

THOMAS J. PERKOWSKI, ESQ.
THOMAS J. PERKOWSKI, ESQ., PC
SOUNDVIEW PLAZA
1266 EAST MAIN STREET
STAMFORD, CT 06902

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AUG 2 6 2004

OFFICE OF PETITIONS

In re Application of	:	
Check et al.	:	
Application No. 09/837,535	:	ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. 108-083USA000	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 16, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed July 7, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on October 8, 2003. A Notice of Abandonment was mailed on May 19, 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 2800 for processing of the Request for Continued Examination under 37 CFR 1.114 previously filed on October 7, 2003, which is now proper with the amendment filed concurrently with the instant petition.

Telephone inquiries should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after September 28, 2004 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

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 6 2002

#7

DANN, DORFMAN, HERRELL & SKILLMAN
SUITE 720
1601 MARKET STREET
PHILADELPHIA, PA 19103-2307

In re Application of	:	
John M. Barker	:	
Serial No.: 09/837,539	:	DECISION ON PETITION
Filed: April 18, 2001	:	
For: Medical Device with Shield	:	
Having A Retractable Needle	:	

This is in response to applicants' petition filed April 22, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the merits as it relates HIV/AIDS.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, X. Therefore the petition is **GRANTED**.

The application will be forwarded to the examiner for action on the merits commensurate with this decision.

Should there be any questions with regard to this letter please contact John E. Kittle by letter addressed to the Director, Technology Center 3700/2900, Washington, DC 20231, or by telephone at (703) 308-0873 or by facsimile transmission at (703) 308-3139.

John E. Kittle
Director
Technology Center 3700/2900

Pet. Dec.

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: 2/16/05

rld
Paper Number____

In re application of
Paolo Palmas et al.
Serial No. 09/837,687
Filed: April 18, 2001
For: PROCESS AND APPARATUS FOR QUICK FEED CONTACTING WITH IMMEDIATE VAPOR DISENGAGEMENT

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT - OFFICE ACTION NOT RECEIVED, filed by facsimile transmission on July 20, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of May 11, 2004, for failure to respond to the Office letter, mailed October 29, 2003, be withdrawn. The petitioner asserts that the Office letter, mailed October 29, 3003, was not received at the applicant's correspondence address.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the Office letter, mailed October 29, 3003, was not received at the applicant's correspondence address. The evidence provided includes a statement by the petitioner that the Office letter, mailed October 29, 2003, was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter was not received. Also provided is a copy of the attorney's application docket records where the Office letter would have been posted had it been timely received at the correspondence address.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter and restarting of the statutory period of response from the remail date thereof.

It is further noted that the instant petition was accompanied by a $130.00 petition fee. However, a petition of this type does not require such fee. Therefore, a refund of the $130.00 may be obtained by directing a copy of this decision along with a written request for such a refund to the Office of Finance.

The Petition is **GRANTED**.

Jacqueline Stone, Director (Acting)
Technology Center 1700
Chemical and Materials Engineering

John G. Tolomei
Patent Department UOP LLC
25 East Algonquin Road
P.O. Box 5017
Des Plaines, IL 60017-5017

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

R. SCOTT MORRIS
PO BOX 550
WEST WAREHAM, MA 02576

COPY MAILED

MAY 3 0 2002

OFFICE OF PETITIONS

In re Application of :
Morris et al. :
Application No. 09/837,740 : DECISION ON PETITION
Filed: April 17, 2001 :
For: NEW HETEROATOMIC POLYMER :
FOR MORE EFFICIENT SOLID :
POLYMER ELECTROLYTES FOR :
LITHIUM BATTERIES :

This is a decision on the Petition, filed February 20, 2002, under 37 CFR 1.137(b), to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (hereinafter "Notice") mailed June 13, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice, and required the Abstract on a separate sheet. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above identified application became abandoned on August 14, 2001. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

With the instant petition, Petitioner has submitted the Abstract on a separate sheet. Accordingly, the petition is granted.

This application is being forwarded to the Office of Initial Patent Examination for further processing.

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

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

Paper No. 6

SWABEY OGILVY RENAULT
SUITE 1600
1981 McGILL COLLEGE AVENUE
MONREAL, QUEBEC, CANADA H3A 2Y3

COPY MAILED

SEP 2 4 2001

OFFICE OF PETITIONS

In re Application of :
Robert H. Marchessault et al :
Application No. 09/837,742 :
Filed: April 18, 2001 :
Attorney Docket No. 1770-251US :

ON PETITION

This is in response to the petition under 37 CFR 1.47(a), originally filed on April 18, .2001 and supplemented by facsimile transmission on April 18, 2001

The petition is **DISMISSED**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the nonsigning inventor. Applicant lacks item (4) set forth above.

A statement of the inventor's last known address is missing and is required.

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: 2201 South Clark Plaza
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

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

Frances Hicks

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. 8

SWABEY OGILVY RENAULT
SUITE 1600
1981 McGILL COLLEGE AVENUE
MONTREAL, QUEBEC, CANADA H3A 2Y3

COPY MAILED

OCT 1 8 2001

OFFICE OF PETITIONS

In re Application of :
Robert H. Marchessault et al :
Application No. 09/837,742 : DECISION GRANTING
Filed: April 18, 2001 : STATUS UNDER 37 CFR 1.47(a)
For: MAGNETIC COMPOUND :

This is in response to the petition filed October 10, 2001, requesting reconsideration of a decision mailed September 24, 2001 which refused to accord 37 CFR 1.47(a) status to the above-identified application.

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), 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.

Telephone inquiries regarding this decision should be directed to Petitions Examiner Wan Laymon at (703) 306-5685.

This application is being forwarded to Technology Center AU 1645 for examination in due course.

Frances Hicks
Lead 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. 9

VIRNA VEIGA
2456 LA FONTAINE
MONTREAL, QUEBEC, CANADA
H2K 2A3

COPY MAILED
OCT 1 8 2001
OFFICE OF PETITIONS

In re Application of
Marchessault; Ryan; and Veiga
Application No. 09/837,742
Filed: April 18, 2001
For: MAGNETIC COMPOUND

Dear Ms. Veiga:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 in 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. 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 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

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

cc:
SWABEY OGILVY RENAULT
SUITE 1600
1981 McGILL COLLEGE AVENUE
MONTREAL, QUEBEC, CANADA H3A 2Y3

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

MAIL

DEC 21 2001

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:)
Michael Propp, et al)
Application No.: 09/837,760)
Filed: April 17, 2001)
For: WIDEBAND COMMUNICATIONS)
USING DELAY LINE CLOCK)
MULTIPLIER)

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record filed November 20, 2001.

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 withdrawal 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 does not contain a clear indication which attorneys are seeking withdrawal. The request states "the firm of Darby & Darby P.C." and list some names. However, the Patent and Trademark Office does not recognize law firms as such and therefor it cannot be determined which persons are its attorneys. The 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.

It is noted that the Request for Withdrawal as Attorney or Agent is effective only for Louis J. DelJuidice, because he is the only attorney/agent who has signed the request.

Accordingly, the request is **GRANTED**.

A suggested remedy to correct the deficiency outlined above, would be to include a statement such as "The undersigned Attorney is signing on behalf of each and every Attorney and/or agent listed below".

The correspondence address will be changed. All future communications from the United States Patent and Trademark Office (Office) will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Dr. Michael B. Propp
Adaptive Networks, Inc.
94 Wells Avenue
Newton, MA 02159

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin, NJ 08830

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OFFICE OF PETITIONS

In re Application of	:	
Francis Young Day, et. al.	:	
Application No. 09/837,785	:	ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. 2000P09095 US01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on September 18, 2006, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed April 17, 2006. A Notice of Abandonment was mailed on September 11, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,400 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Publications to be processed 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
Washington, D.C. 20231
www.uspto.gov

John S. Artz
Ste. 250
28333 Telegraph Road
Southfield MI 48304

Paper No. 7

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APR 0 2 2003

OFFICE OF PETITIONS

In re Application of
David Morrow, Jessie Hubbard, and Salvatore Locascio
Application No. 09/837,826
Filed: April 18, 2001
Attorney Docket No.: WLI 1012 PUS
Title: LACROSSE GOALIE STICK HEAD

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(a)[1], filed November 22, 2002, to revive the above-identified application. On January 27, 2003, the petitioner filed a petition under 37 CFR 1.137(b)[2] via facsimile transmission.

The facsimile transmission sheet requested that the petition under the unintentional standard be filed "in lieu of" the previously filed petition filed under the unavoidable standard. As such, the petition under 37 CFR 1.137(a) has been **DISMISSED AS MOOT**. The petition fee has not been charged to petitioner's Deposit Account.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 15, 2002, which required the applicant to file an

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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 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.

executed oath or declaration, along with the fee associated with the late filing of an oath of declaration. The notice set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on July 16, 2002.

With the instant petition, petitioner has included the petition fee[3], and has made the proper statement of unintentional delay. A statement of facts from the attorney of record was included with the previous petition.

The later petition lacks item (1) above.

Regarding the first requirement, the requirement has not been satisfied because Petitioner did not submit the required reply to the notice. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed[4]. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(a)(1). The Notice indicated that the application had been filed without an executed oath or declaration, and indicated that one would need to be supplied, along with the required surcharge of $65.00 for the late filing fee of an oath or declaration for a small entity. The petition was not accompanied by either of these requirements. Although the petition indicates that these were previously filed on November 14, 2002, neither of these requirements have been found after the completion of a review of the Patent Application Location Monitoring system and a search of the official file.

Therefore, this petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

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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3 Petitioner has included the wrong amount for the petition fee. The deficient $10 has been charged to his deposit account, as authorized in the Fee Transmittal sheet included upon filing.

4 See M.P.E.P. 711.03(c).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 11

John S. Artz
Ste. 250
28333 Telegraph Road
Southfield MI 48304

COPY MAILED

JUL 07 2004

OFFICE OF PETITIONS

In re Application of :
David Morrow, Jessie Hubbard, and Salvatore Locascio :
Application No. 09/837,826 :
Filed: April 18, 2001 :
Attorney Docket No.: WLI 1012 PUS :
Title: LACROSSE GOALIE STICK HEAD :

DECISION ON PETITION

This is a decision on the renewed petition filed March 22, 2004, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice of Missing Parts (notice), mailed May 15, 2002, which required the applicant to file an executed oath or declaration, along with the fee associated with the late filing of an oath of declaration. The notice set a shortened statutory period for reply of two (2) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on July 16, 2002.

With the original petition, submitted on November 22, 2002, petitioner submitted the petition fee and the proper statement of unintentional delay.

The original petition was dismissed via the mailing of a decision on April 2, 2003 for failure to include the required reply.

---

1 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.

With the renewed petition, this deficiency has been rectified, and an executed declaration has been provided, along with the required surcharge. Petitioner has also submitted a duplicate petition fee, which has been refunded to his Deposit Account.

As such, the petition is **GRANTED.**

After this decision is mailed, the application will be forwarded to Technology Center 3700 for further processing.

Paul Shanoski

Paul Shanoski
Senior Attorney
Office of Petitions
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
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John S. Artz
Ste. 250
28333 Telegraph Road
Southfield MI 48304

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NOV 0 8 2005

OFFICE OF PETITIONS

In re Patent No. 6,921,347 :
Issue Date: July 26, 2005 :
Application No.: 09/837,826 : NOTICE
Filed: April 18, 2001 :
Attorney Docket No.: WLI 1012 PUS :
For: LACROSSE GOALIE STICK HEAD

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28(c), filed September 9, 2005.

Petitioner has notified the Office that small entity status is no longer appropriate.

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**. Office records have been altered to show that you are no longer a small entity.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3230.

This file is being forwarded to the Files Repository.

E. Shirene Willis

E. Shirene Willis
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

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 04/20/2010

Applicant	: Brian Mark Shuster	: DECISION ON REQUEST FOR
Patent Number	: 7593864	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/837,852	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/18/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1477** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

SCOTT C HARRIS
FISH & RICHARDSON P.C.
4350 LA JOLLA VILLAGE DRIVE
SUITE 500
SAN DIEGO, CA 92122

COPY MAILED

MAY 2 0 2003

OFFICE OF PETITIONS

In re Application of	:	
Scott M. Perry	:	
Application No. 09/837,876	:	NOTICE
Filed: April 17, 2001	:	
Attorney Docket No. 07319/005002	:	

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 AU 2622.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DW 03-03

Paper No. 8

GARDERE WYNNE SEWELL, LLP
3000 THANKSGIVING TOWER
1601 ELM STREET SUITE 3000
DALLAS TX 75201-4767

COPY MAILED

MAR 1 2 2003

OFFICE OF PETITIONS

In re Application of	:	
M. Russel Merchen	:	
Application No. 09/837,884	:	DECISION REFUSING STATUS
Filed: 18 April, 2001	:	
Attorney Docket No. 124521-1000	:	

This is a decision on the petition filed on 28 October, 2002, under 37 CFR 1.47(a), 1.48(a), and 1.183, which is being treated as (1) a petition under 37 CFR 1.48(a) to amend the inventive entity by the addition of Stan Marett (Marett), John Brassard (Brassard), and Terry Montgomery (Montgomery) as joint inventors; (2) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.48(a)(2) which requires a statement from a person being added (Montgomery), (3) a petition under 37 CFR 1.183, requesting waiver of 37 CFR 1.63 and 1.67, which require that a named inventor execute a supplemental declaration, and 4) as authorized by 37 CFR 1.48(a)(3) a petition under 37 CFR 1.47(a), to accept the declaration filed 28 October, 2002, which lacks the signature of Montgomery.

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. **FAILURE TO TIMELY RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petitions Under 37 CFR 1.48, 1.183, and 1.47."

The above-identified application was filed on 18 April, 2001, with an executed declaration naming M. Russell Merchon as the sole inventor.

On 28 October, 2002, the present petition was filed, whereby petitioners request that Brassard, Marett, and Mongtomery be

added as named inventors. Petitioners also request waiver of the rules in that Montgomery refuses to sign the declaration and the statement of lack of deceptive intent as required by 37 CFR 1.48, and that Merchon refuses to sign the declaration naming him as a joint inventor along with Brassard, Marett, and Montgomery.

Petition Under 37 CFR 1.183 to waive 37 CFR 1.48(c).

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by: (1) a petition including a statement from each person being added that the addition is necessitated by amendment of the claims and that the inventorship 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 assignee, if any of the originally named inventors has executed an assignment; and (5) if the application is involved in an interference, the amendment to add claims must be accompanied by a motion under 37 CFR 1.634.

The present petition lacks items (1) and (2).

In response to item (1), the petition lacks a statement of lack of deceptive intention on the part of Montgomery, an inventor being added. In response to item (2), the supplemental declaration lacks the signatures of Merchon and Montgomery.

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 Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed.[1]

Petitioners must show that the inability to obtain the statement

[1] MPEP 201.03(B).

from Montgomery, notwithstanding the exercise of reasonable care and diligence, due to circumstances beyond their control. Under the circumstances of this case, petitioners should proceed as noted in more detail *infra* to make their showing in support of their request for waiver.

Petition Under 37 CFR 1.47(a).

Likewise, the entire showing of record, considered also under 37 CFR 1.47, does not currently warrant acceptance of the declarations under 37 CFR 1.63 and 37 CFR 1.48(a)(2), filed on 28 October, 2002, so as to amend the inventive entity of record under 37 CFR 1.48(a).

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, and the declaration); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The present petition lacks items (1), (3) and (4).

In respect to item (1), the showing of record is insufficient to establish that Montgomery refused to sign the declaration after being presented with a copy of the application. Although petitioners have presented a letter transmitting the application papers to Montgomery by certified mail, the name of the person who received and signed the certified mail receipt appears to be "David Kavy". As such, it is unclear whether Montgomery ever actually received the application and statement under 37 CFR 1.48(a). Additionally, although the petition states that petitioners "have attempted to contact Mr. Montgomery on a number of occasions" petitioners have not presented the details of those attempts. Details of the attempts to contact Montgomery should be presented in affidavits or declarations of facts by persons having first-hand knowledge of the details. Petitioners should attempt to verify that Montgomery actually received the application papers. If petitioners are unable to do so, petitioners should send an additional copy of the application papers, declaration, and statement under 37 CFR 1.48 to Montgomery at his last known address. Petitioners may submit proof in the form of a copy of the cover letter transmitting the application papers to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first

hand knowledge of the details.

Furthermore, a brief Internet search reveals that Montgomery may now be living at a different address in Fort Worth, TX. Petitioners should verify the last known address of Montgomery, and, if a more recent address is discovered send a copy of the application and statement under 37 CFR 1.48 to Montgomery at the last known address.

Additionally, proof that the inventor refuses to sign the Declaration must be presented.[2] If there is a written refusal, petitioners must provide a copy of the written refusal. If the refusal is made orally to a person, then the person must provide details of the refusal in an affidavit or declaration of facts.

Lastly, it is noted that petitioners have presented a copy of an employment agreement between Biz-Port, Inc., and inventor Merchen. If the application has been assigned to Biz-Port, Inc., or another entity, petitioners must provide written consent by the assignee.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703)308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

---

[2] MPEP 409.03(d).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GARDERE WYNNE SEWELL LLP
3000 THANKSGIVING TOWER
1601 ELM STREET, SUITE 3000
DALLAS, TX 75201-4767

COPY MAILED

JAN 1 8 2007

OFFICE OF PETITIONS

In re Application of
MERCHEN, et al.
Application No. 09/837,884
Filed: April 18, 2001
Attorney Docket No. 124521-1000

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 8, 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 Karl L. Larson on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Russel M. Merchen at the address indicated below. There is an outstanding Office action mailed December 1, 2006 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **RUSSEL M. MERCHEN**
8613 JOSHUA COURT
NORTH RICHLAND HILLS, TX 76180

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/837,884	04/18/2001	M. Russel Merchen	124521-1000

CONFIRMATION NO. 8347

OC000000022029020

Gardere Wynne Sewell, LLP
3000 Thanksgiving Tower
1601 Elm Street Suite 3000
Dallas, TX 75201-4767

Date Mailed: 01/17/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/08/2006.

- 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.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

#4
DW

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 30 2003

MAILED

JUN 30 2003

OFFICE OF THE DIRECTOR
TC 3600

Law Offices of Clement Cheng
17220 Newhope Street #127
Fountain Valley, CA 92708

In re application of
Sheu Ren Yi
Application No.09/837,890 :
Filed: April 18, 2001 :
For: AUTOMATIC AGENCY MARKETING METHOD AND THE SYSTEM OF THE SAME :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on November 18, 2002, under 37 CFR 1.36 and MPEP 402.06, to withdraw as the attorney of record in the above-identified application. The delay in treating this petition is sincerely regretted.

The request is **NOT APPROVED as MOOT**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorneys by James Y. Go, filed November 18, 2002 is dismissed as moot because of the acceptance by the Office of the revocation of power of attorney filed June 5, 2003.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0868
(703) 605-0586 (facsimile)

SNM/dxn: 6/16/03

Cc: James Y. Go
Blakely, Sokoloff, Taylor & Zafman LLP
12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90025-1030

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE LAW OFFICE OF JAMES E. HARRIS
P.O. BOX 872557
VANCOUVER WA 98687

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DEC 11 2009

OFFICE OF PETITIONS

In re Patent No. 7,009,974	:	
Issue Date: March 7, 2006	:	
Application No. 09/837,896	:	NOTICE
Filed: April 18, 2001	:	
Attorney Docket No. 3981-12	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 filed October 19, 2009. 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 **DISMISSED**.

The request under 37 CFR 1.28 cannot be accepted at this time since it appears that the petition is not signed by a person having authority to act in the above-identified patent.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

(1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
(2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
(3) An assignee as provided for under §3.71(b) of this chapter; or

(4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney or agent registered to practice before the U.S. Patent and Trademark Office or the assignee of the entire interest under 37 CFR 3.73(b).

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

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

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

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

The centralized facsimile number is (571) 273-8300.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: Leah Maher
Force10 Networks, Inc.
350 Holger Way
San Jose, CA 95134

SPE: R. Pascal

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/17/07

TO SPE OF : ART UNIT 2817

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/837,897 Patent No.: 7012487

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: _____

Robert Pascal
Supervisory Patent Examiner
Technology Center 2800

SPE

2817
Art Unit

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)

OK to mail
4/12/07

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,012,487 B2

APPLICATION NO.: 09/837,897

ISSUE DATE : March 14, 2006

INVENTOR(S) : Stephen ALLOTT

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:

- In column 6, line 43, "second, and third am" should be replaced with --second, and third gm--.

- In column 5, lines 19 and 20, "The integrated circuit of claim 5, wherein the control voltage is used to tune the first filter." should be replaced with --The integrated circuit of claim 6, wherein the first filter is a low pass filter.--.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Sterne, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005-3934

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.

644858.1

FEB 2 8 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Cooley Godward LLP
Attn: Patent Group
Five Palo Alto Square
3000 El Camino real
Palo Alto, CA 94306-2155

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JUN 07 2007

OFFICE OF PETITIONS

In re Application of	:	
Hui Wang	:	
Application No. 09/837,902	:	DECISION ON PETITION
Filed: April 18, 2001	:	TO WITHDRAW
Attorney Docket No. ACMR-001-02US	:	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 June 19, 2001.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to Cooley Godward LLP has been revoked by the applicant of the patent application on June 25, 2002. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to Terri Williams at 571-272-2991.

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Hui "David" Wang**
4378 Enterprise Street
Fremont, CA 94538

3-8-2010

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

Patent No. : 7,039,801
Inventor(s) : Attila Narin
Issued : May 2, 2006
For: SYSTEM AND METHOD FOR INTEGRATING SECURE AND NON-SECURE SOFTWARE OBJECTS

Re. Request for Certificate of Correction

Consideration has been given your request under the provisions of Rule 1.323or 1.322.

The proposed changes on the title page, item [56] under Other Publications, in column 2, line 1, before "Classes" is printed in accordance with the record.

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

Further correspondence concerning this matter, should be directed to:

U.S. Patent and Trademark Office
Washington, DC 20231
Attn: Decisions & Certificates of Correction Branch

Eva James
For Mary Diggs
Decisions & Certificate
of Correction Branch
(703) 756-1583or 1580

Woodcock Washburn (Microsoft Corporation)
Cira Centre, 12th floor
2929 Arch Street
Philadelphia, PA 19104-2891

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

MORRISON & FOERSTER
ATTN: PATENT DEPT
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482

COPY MAILED

NOV 2 6 2001

OFFICE OF PETITIONS

In re Application of	:	
Hui Wang	:	
Application No. 09/837,911	:	DECISION ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. 495152000111	:	

This is a decision on the paper styled "Request For A Corrected Filing Receipt" filed August 6, 2001, requesting that the above-identified application be accorded a filing date of April 18, 2001, rather than the presently accorded filing date of April 16, 2001. The petition is properly treated as a petition under 37 CFR 1.10(c).

Applicant requests the later filing date on the basis that the application was purportedly deposited in "Express Mail" service with the U.S. Postal Service on April 18, 2001, pursuant to the requirements of 37 CFR 1.10. While the Express Mail label No. EL514036882US shows a "date-in" of April 76, 2001, it also includes a "Palo Alto Cambridge USPS" stamp dated April 18, 2001. It is noted that the same Express Mail label number appears on the original transmittal letter submitted with the present application.

A search of the USPS Track and Confirm record confirms that the package in question was accepted at 4:46pm at the USPS in Palo Alto, CA on April 18, 2001. Accordingly, the petition is granted. PTO records have also been updated to show the correct docket number and mailing address. A copy of the corrected Filing Receipt is enclosed.

No petition fee is required and none has been charged.

The application is being returned to Technology Center AU 1761 for examination in due course.

Telephone inquires specific to this matter should be directed to Wan Laymon at (703) 306-5685.

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

Enclosure: Corrected Filing Receipt
Express Mail Track/Confirm Sheet

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

#24

MAILED
FROM DIRECTORS OFFICE

OCT 31 2005

TECHNOLOGY CENTER 3600

Dr. Max Fogiel
44 Maple Court
Highland Park, NJ 08904

In re Application of
Antonio Jose de Araujo Porto et al
Application No. 09/837,951
Filed: April 19, 2001
For: METHOD OF MANUFACTURING PISTONS AND COMPONENTS THEREOF, AND FORGING TOOLS

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition to withdraw the holding of abandonment filed February 7, 2005.

The petition is **DISMISSED**.

A review of the file record reveals that a Non-Final Office action was mailed to applicants on June 9, 2004. Applicants, on June 7, 2004, filed a change of address with the Office which was received on the same day as the mailing of the Office action. Subsequently applicants never received the Non-Final Office action of June 9, 2004. Since a response was not received before the expiration of the six-month statutory period for reply of the Non-Final Office action of June 9, 2004, the application was held abandoned, and a Notice to that effect was mailed on January 11, 2005.

Applicants' petition asserts that the Office action mailed June 9, 2004 was not received.

There is a strong presumption that Office communication properly addressed and delivered to the United States Postal Service, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

(1) A statement from the practitioner stating the Office communication was not received by the practitioner;

(2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

(3) 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.

The docket records indicated above must include **a copy of the list of all responses in the practitioner's office to which the action was properly sent with the due date at and around September 9, 2004**. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

The Petition includes a statement that the above-noted Office action was not received. The Petition also includes a statement that a search of the file jacket and docket records indicates that the Office action was not received. Applicants' petition provides a copy of the contents of the application file showing where such action would have been entered had it been received.

Applicants' Petition has failed to comply with requirement (3) indicated above. Applicants' Petition has not provided a complete docket record with a copy of the list of **all responses** in the practitioner's office to which the action was sent with the due date at and around September 9, 2004.

Applicants' evidence of non-receipt of the Office action mailed June 9, 2004 is insufficient to withdraw the holding of abandonment, and 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 1.181." Correspondence with respect to a Petition to Withdraw the Holding of Abandonment under *Delgar Inc. v. Schuyler* should be mailed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Randolph A. Reese
Special Program Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/bkg: 10/28/05

UNITED STATES 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. 26

Dr. Max Fogiel
44 Maple Court
Highland Park, NJ 08904

COPY MAILED

JUN 30 2006

OFFICE OF PETITIONS

In re Application of	:	
Porto et al.	:	
Application No. 09/837,951	:	DECISION ON
Filed: April 19, 2001	:	PETITION
Title: METHOD OF MANUFACTURING	:	
PISTONS AND COMPONENTS	:	
THEREOF, AND FORGING TOOLS	:	

This is a decision on the "RENEWED PETITION UNDER 37 CFR 1.181 to withdraw holding of abandonment based on failure to receive Office action" filed by facsimile on November 10, 2005 (and by mail on November 14, 2005).

The above-identified application became abandoned for failure to file a timely and proper reply to the non-final Office action mailed June 9, 2004[1]. This Notice set a three month shortened statutory period for reply, with extensions of time obtainable under 37 CFR §1.136(a). No reply having been received and no extensions obtained, the above-identified application became abandoned effective September 10, 2004. A courtesy Notice of Abandonment was mailed on January 11, 2005.

In response, applicants filed the initial petition, asserting that the Office action was never received[2] and requesting that the holding of abandonment be withdrawn. By decision mailed October 31, 2005, the petition was dismissed for failure to

[1] Pursuant to the decision mailed June 1, 2004, a prior holding of abandonment was withdrawn and the Office action mailed April 4, 2003 was re-mailed on June 9, 2004.

[2] Petitioner states that even though a change of address was filed on June 9, 2004, the re-mailed Office action would still have been received by petitioner at the old address. In this instance, petitioner owns the property at the old address and continues to check mail there daily.

include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

There is a strong presumption that correspondence is properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of the Office action, petitioner must submit evidence to overcome this presumption. The showing required to establish non-receipt 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. In addition, 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.

Having submitted a copy of the docket record showing where the Office action would have been entered had it been received, on renewed petition, it is now concluded that Petitioner has supported his claim of non-receipt with an adequate showing.

In view thereof, the notice of abandonment mailed January 11, 2005 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 3644 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-mailing of the non-final Office action mailed June 9, 2004 and for restarting of the period for reply.

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

#12

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

MAILED

JUN 1 2004

Office of the Director
Group 3600

Dr. Max Fogiel
61 Ethel Road West
Piscataway, NJ 08854

In re Application of
Antonio Jose de Araujo Porto, et al. :
Application No. 09/837,951 :
Filed: April 19, 2001 :
For: METHOD OF MANUFACTURING PISTONS AND COMPONENTS THEREOF, AND FORGING TOOLS

DECISION ON THE PETITION TO WITHDRAW THE HOLDING OFABANDONMENT

This is in response to applicants' petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO), on December 10, 2003.

The petition is **GRANTED.**

A review of the file record reveals that an Office action, setting a three month time period for reply, was mailed to applicants on April 4, 2003. Since a response to this Office action was not received, the application was held abandoned, and a Notice to that effect was mailed on November 18, 2003.

Applicants' petition submits a statement that the Office action mailed on April 4, 2003 was not received.

A further review of the file record reveals that the Office action mailed April 4, 2003 was in fact returned to the Office as undeliverable mail.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office action of April 4, 2003.

Randolph A. Reese

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(703) 308-2121

RAR/mjz: 5/20/04

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Paper No. 9

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
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SAN FRANCISCO CA 94111-3834

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NOV 13 2003

OFFICE OF PETITIONS

In re Application of :
William F. Hackett, Jr. :
Application No. 09/838,004 :
Filed: April 18, 2001 :
Attorney Docket No. 016021001010 :

ON PETITION

This is a decision on the petition, filed November 6, 2003, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed November 20, 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. A Notice of Abandonment was mailed on July 2, 2003. On November 6, 2003, an amendment and the present petition were filed.

The petition is **GRANTED**.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9220. All other inquiries regarding this application should be directed to the Technology Center.

The application file is being forwarded to Technology Center 2836 for consideration of the amendment filed November 6, 2003.

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

#12
DW

UNITED STATES PATENT AND TRADEMARK OFFICE

JUN 16 2003

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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JUN 16 2003

OFFICE OF THE DIRECTOR
TC 3600

Katten Muchin Zavis Rosenman
575 Madison Avenue
New York, NY 10022-2585

In re Application of
Yuki Tsuchida et al.
Application No. 09/838,015
Filed: April 19, 2001
For: ROLLING BEARING WITH SEAL PLATE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office on January 29, 2003 and supplemented on June 13, 2003.

The petition is **GRANTED**.

A review of the file record indicates that the application was held abandoned for failure to file a timely response to an Office communication dated June 14, 2002, and a notice to that effect was mailed on January 24, 2003.

Applicants' petition includes a copy of a response and includes a USPTO auto-reply facsimile transmission return receipt bearing a transmittal date of September 16, 2002. The received cover page in the auto-reply facsimile transmission does not specify what was received. This is insufficient evidence of a timely response. However, the copy of the response includes a Certificate of Transmission dated September 16, 2002. A statement by Harris A. Wolin, was received on June 13, 2003, which attests to the personal knowledge of transmitting the response on the date indicated on the Certificate of Transmission. This is sufficient evidence of a timely response.

Since a timely response to the Office action was filed, the holding of abandonment is withdrawn and the application is restored to pending status. The application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, and then to the Examiner for prompt action on the merits of the application.

Kenneth J. Dorner

Kenneth J. Dorner, Special Program Examiner
Patent Technology Center 3600
Telephone No.: (703) 308-0866
Facsimile No.: (703) 605-0586

KJD/tpl: 6/13/03

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Paper No. 7

Keith Frantz
401 West State Street
Suite 200
Rockford, IL 61101

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SEP 2 9 2003

OFFICE OF PETITIONS

In re Application of	:	
Donald J. Mischo	:	
Application No. 09/838,043	:	ON PETITION
Filed: April 18, 2001	:	
Attorney Docket No. MISCHO-2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 16, 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 February 27, 2003, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on May 28, 2003.

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

The application file is being forwarded to Technology Center AU 1732 for further processing.

Latrice Bond

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

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SUITE 200
ROCKFORD IL 61101

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MAY 17 2007

OFFICE OF PETITIONS

In re Application of	:
Donald J. Mischo	:
Application No. 09/838,045	: DECISION GRANTING PETITION
Filed: April 18, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. MISCHO-1	:

This is a decision on the petition under 37 CFR 1.137(b), filed January 3, 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 RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Final Rejection of June 28, 2005, 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 Technology Center AU 3653.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No. 8

BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES CA 90025

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OFFICE OF PETITIONS

In re Application of	:
Michael E.S. Luna et al	:
Application No. 09/838,077	: DECISION ON PETITION
Filed: April 18, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 03399P047	:

This is a decision on the petition, filed May 14, 2003, under 37 CFR 1.137(f), which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application.

The petition is dismissed as **MOOT**.

An applicant who makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request were never made. *See* Notice published on www.USPTO.gov on June 6, 2003, which clarifies the USPTO's interpretation of the provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv).

In the instant application, a notice to rescind was filed prior to the filing date of a corresponding application in a foreign country. Therefore, since the filing of the request to rescind prior to the filing date of a corresponding application in a foreign application resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned for the reason stated above, the petition fee of $1300 is being credited to Deposit Account No. 02-2666 as authorized.

This application is being forwarded to Technology Center Art Unit 2155 for examination in due course.

Any inquiries concerning this decision 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

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SEP -5 2003

Paper No. 12

In re Application of William F. Stout et al. Serial No. 09/838,129 Filed: April 20, 2001 For: LATENT PROPERTY DIAGNOSING PROCEDURE	: : : : : :	DECISION ON PETITION REGARDING WITHDRAWAL OF ATTORNEY

John W. Ryan petitioned on March 13, 2003, to withdraw from representation in this application. The petition has only lately been associated with the application file.

The petition is DISMISSED as moot in view of the fact that applicant revoked all previous powers of attorney on May 8, 2003.

PETITION DISMISSED AS MOOT.

E. Rollins-Cross, Director
Technology Center 3700

John W. Ryan
Wilmer Cutler and Pickering
2445 M Street, N.W.
Washington, DC 20037

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THOMAS J. SCOTT, JR., ESQ.
HUNTON & WILLIAMS
SUITE 1200
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WASHINGTON, DC 20006

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SEP 2 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Verchere, David	:	
Application No. 09/838,133	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 56490.000004	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 7, 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 a supplemental appeal brief; (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.

This matter is being referred to Technology Center 3600 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

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CARR & FERRELL, LLP
2200 GENG ROAD
PALO ALTO, CA 94303

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OFFICE OF PETITIONS

In re Application of :
SUORSA, et al. :
Application No. 09/838,135 :
Filed: April 20, 2001 :
Attorney Docket No. 200704494-1 :
:

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed November 13, 2007.

The request is NOT APPROVED.

A review of the file record indicates that CARR & FERRELL, LLP does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

Telephone inquires concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: HEWLETT PACKARD COMPANY
P.O. BOX 272400/3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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MAR 17 2005

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON VA 22201-4714

In re Application of	:
Reid W. von Borstel	:
Serial No.: 09/838136	: SUSPENSION OF ACTION
Filed: April 20, 2001	:
Attorney Docket No.: 1331-337	:

This is in response to the petition under 37 CFR 1.103, filed March 4, 2005, to suspend prosecution of the above identified application for six months.

The petition fee of $200.00 will be charged to applicants' Deposit Account No. 14-1140, as directed.

Applicants seek suspension of the prosecution on this application for a period of six months because of a pending civil suit relating to the question of inventorship of this application.

BACKGROUND

This application was filed April 20, 2001, and has been examined. The examiner has determined that the claims are allowable.

DISCUSSION

37 CFR 1.103. Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in ∋1.17(I). Action will not be suspended when a reply by applicant to an Office action is required.

M.P.E.P. 709 relates to suspension of action in an application. 37 CFR 1.103 permits the Office to suspend action upon petition by applicants for **good and sufficient cause** (emphasis added). Applicants state that they are involved in a civil suit the purpose of which is to determine inventorship. They further state that the matter is destined to be arbitrated, but that no firm date or arbitrator has been set or selected, only that proceedings should begin later in 2005.

The question of inventorship and/or ownership of an application (invention) is not a matter which relates to the determination of patentability of the application. While inventorship of an

application is presumed to be correct upon filing of an application, discovery of an error therein is correctable at any time during prosecution of the application or subsequent to issuance of the application as a patent. Thus determination of inventorship alone is not considered to be a good and sufficient reason for suspension of action in a patent application.

Applicant's statement in the petition that change of inventorship/ownership may raise issues of obvious double patenting also raises the possibility, if the inventorship/ownership is not changed, that an interference may result. The examiner will reconsider the allowability of the application in view of these scenarios.

DECISION

The petition to suspend action is DENIED. Applicant has not presented a good and sufficient cause warranting suspension of action by the examiner.

The application will be forwarded to the examiner of record 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, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number 571-273-8300.

Bruce Kisliuk
Director, Technology Center 1600

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Paper No. 5

Neil Teitelbaum
Vice President, Intellectual Property
JDS Uniphase Corporation
3000 Merivale Road
Ottawa, Ontario, Canada K2G 6N7

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APR 29 2003

OFFICE OF DIRECTOR
GROUP

In re Application of:
DELISLE *et al.*
Serial No.: 09/838,137
Filed: April 20, 2001
Attorney Docket No.: **10-336 US**

DECISION ON PETITION

This is a decision in response to the communication filed February 06, 2003. The communication has been treated as a petition to re-mail the Office action and reset the period for response.

The petition is **DISMISSED**.

A non-final Office action was mailed on July 08, 2002.

Petitioner asserts that counsel did not receive the Office action, and that the Office action was mailed to an old address. Petition further asserts that a "Notice of Customer Number Record Change", indicating an acceptance of a correspondence address was changed mailed on June 08, 2001, was received. Petitioner also asserts that a "Request for Customer Number Data Change" was filed on March 14, 2002, which changed the correspondence address to the above address. To support the above assertions, petitioner provides a copy of the "Notice of Customer Number Record Change" and a copy of the printed fax machine confirmation for the "Request for Customer Number Data Change".

A review of the written record indicates that the Office action was mailed to the correspondence address provided by the applicant in the Declaration deposited with the application papers filed on April 20, 2001, which address does not correspond to petitioner's current address. A further review of the record reveal that a Customer Number was never associated with the application. As a result, the changes made with respect to the Customer Number were never applied to the instant application

37 CFR § 1.33 states that "when filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, in a clearly identifiable manner, in any paper submitted with an application filing."

In this case, the Customer Number is merely provided at the bottom of the transmittal sheet with no clear indication that the Customer Number was to be associated with the instant application.

Since the Office action was properly mailed the correspondence address of record and petitioner has not made the requisite showing that the Office action was not received at the correspondence address of record, the petition is dismissed.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mailing date of this decision.

Inquiries regarding this decision should be directed to Clayton E. LaBalle at (703) 308-0519.

Clayton E. LaBalle, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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JJGJr: 06-03

Paper No: 9

JDS UNIPHASE CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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OTTAWA ON
K2G 6N7
CANADA

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JUN 27 2003
OFFICE OF PETITIONS

In re Application of:	:	
Delisle, et al.	:	
Filed: 29 April, 2001	:	ON PETITION
Application No. 09/838,137	:	
Docket No.: 10-336US	:	

This is a decision on the petitions filed herein on:

- 13 June, 2003, under 37 C.F.R. §1.137(a)[1] to revive the above-identified application as abandoned due to unavoidable delay, and in light of the allegations also considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181;[2] and

---

[1] A Petition filed under the provisions of 37 C.F.R. §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 an application for 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 required by 37 C.F.R. §1.17(l);
(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the reply due date until the filing of a grantable petition pursuant to the is paragraph was unavoidable; 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).

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).

[2] 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

- 25 June, 2003, under 37 C.F.R. §1.137(b)[3] to revive the above-identified application as having been abandoned due to unintentional delay.[4]

For the reasons set forth below, the petition:

- considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181 is **GRANTED**;
- under 37 C.F.R. §1.137(a) to revive the application alleging unavoidable delay is **DISMISSED** and no fee is charged; and
- under 37 C.F.R. §1.137(b) is **DISMISSED** and no fee is charged.

BACKGROUND

A review of the record reveals:

- it appeared that Petitioner failed to respond timely and properly to the non-final Office action mailed on 8 July, 2002, with reply due (absent extension of time) on or before 8 October, 2002;

---

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. * * * (Emphasis supplied.)

[3] 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.)

[4] On initial review of the file, it appeared that a petition under 37 C.F.R. §1.181 or §1.137(a) might not prevail, and it was suggested to Counsel that he might find it necessary to file a petition under 37 C.F.R. §1.137(b). In fact he did so. However, upon review of the details of the matter, the relief originally sought was supportable without a petition under 37 C.F.R. §1.137(b).

- the instant application was deemed abandoned at midnight 8 October, 2002;
- Notice of Abandonment was mailed on 7 May, 2003, after the instant petition was filed;
- Petitioner filed via FAX on 7 April, 2003, a letter, which was considered in the Technology Center as a request to withdraw the holding of abandonment, and the request was dismissed on 29 April, 2003;
- Petitioner filed the instant petition (with fee authorization, however, no fee was charged) under 37 C.F.R. §1.137(a) on 13 June, 2003, but he re-advanced his contentions that:

  --he did not receive the Office action of 8 July, 2002;

  --the reason he did not receive the Office action was that it was mailed to his old address;

  --he Noticed the Office of his change of address as related to and associated with Customer Number 24,949 on two occasions--the later of which was a FAX submission (with a confirmation activity report) on 14 March, 2002, wherein he set forth the current mailing address of 3000 Merivale Road, Ottawa, Ontario K2G 6N7 CANADA; and

  --the Customer Number 24,949 was associated with the instant application from the day of its filing by virtue of its placement on the application as filed at the time of filing;
- however, notwithstanding the Notice, on 8 July, 2002, the Office mailed the Office action to 1187 Bank St./Ste. 201, Ottowa, ON K1S 3X7 CANADA;
- with the instant petition under 37 C.F.R. §1.137(a) Petitioner also filed a reply to the 8 July, 2002, Office action;
- Petitioner filed the petition under 37 C.F.R. §1.137(b) on 25 June, 2003, and made therein the statement of unintentional delay.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the

satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[5]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[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]

And the Petitioner must be diligent in attending to the matter.[9] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[10]))

---

[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] 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.

Allegations as to the Request to Withdraw
the Holding of Abandonment and
the Petition Alleging Unavoidable Delay

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[11]

A delay is not "unavoidable" when an applicant simply fails to file properly and timely the required reply and so permits the maximum extendable statutory period for reply to expire.[12]

In determining if a delay was unavoidable, decisions on reviving abandoned applications have adopted the standard of the reasonably prudent person acting in their most important business matters.[13] In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account."[14]

The record reflects that:

- contrary to the holding in the decision of 29 April, 2003, the Customer Number 24,949 indeed was associated by Petitioner with the instant file since the time of filing; and

- Petitioner Noticed the Office on more than one occasion as to changes in address--the latest of which was on 14 March, 2002--to be associated with Customer Number 24,949.

Petitioner has made a satisfactory showing of:

- Notice to the Office of change of address (which apparently was not entered into the Office data base) to the current address current mailing address of 3000 Merivale Road, Ottawa, Ontario K2G 6N7 CANADA on 14 March, 2002; and

- non-receipt of the non-final Office action of 8 July, 2002, because said paper was directed to the wrong address by the Office.

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[11] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

[12] See MPEP 711.03(c)(III)(C)(2).

[13] Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "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 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 1913).

[14] Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

CONCLUSION

Accordingly, the petition:

- as considered under 37 C.F.R. §1.181 hereby is **granted**;
- under 37 C.F.R. §1.137(a) is **dismissed**; and
- under 37 C.F.R. §1.137(b) is **dismissed**.

The instant application file is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAR 3 1 2008

CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO, CA 94303

In re Application of

SUORSA, Raymond E. et al.
Application No. 09/838,142
Filed: April 20, 2001
Attorney Docket No. **PA3939US**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 10, 2007.

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 Daniel C. Kloke on behalf of all attorneys of record who are associated with customer No. 22830. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor.

There are no outstanding office actions at this time.

Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **RAYMOND E. SUORSA**
480 RANCHO PRICTA ROAD
LOS GATOS, CA 95033

cc: **JONATHAN M. HARRIS**
CONLEY ROSE LLP
600 TRAVIS ST.
SUITE 1700
JPMORGAN CHASE TOWER
HOUSTON, TX 77002-2912

SPE: B. Casler

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8/21/06

TO SPE OF : ART UNIT 3737

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/838,219 Patent No.: 7001019

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.

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

Comments: _____

SPE

3737
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-3801

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NOV 12 2004

OFFICE OF PETITIONS

In re Application of :
Tetsuo Sakanaka :
Application No. 09/838,277 :
Filed: April 20, 2001 :
Attorney Docket No. 35.G2797

ON PETITION

This is a decision on the petition, filed November 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 September 22, 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 Irvin Dingle at (571) 272-3210.

This matter will be forwarded to Technology Center AU 2633 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#8

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-3801

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NOV 12 2004

OFFICE OF PETITIONS

In re Application of :
Tetsuo Sakanaka :
Application No. 09/838,277 : ON PETITION
Filed: April 20, 2001 :
Attorney Docket No. 35.G2797

This is a decision on the petition, filed November 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 September 22, 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 Irvin Dingle at (571) 272-3210.

This matter will be forwarded to Technology Center AU 2633 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
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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United States Patent and Trademark Office
Washington, D.C. 20231
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DIW 10-01

Paper No. 4

NUTTER MCCLENNEN & FISH LLP
ONE INTERNATIONAL PLACE
BOSTON, MA 02110

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NOV 1 5 2001

OFFICE OF PETITIONS

In re Application of	:	
Everdell et al.	:	
Application No. 09/838,320	:	DECISION DISMISSING
Filed: 19 April, 2001	:	PETITION
Attorney's Docket No. 102689-86	:	

This is a decision on the petition filed on 17 September, 2001, to accord the above-identified application a filing date of 19 April, 2001, with three (3) sheets of drawings containing Figures 34b, 59, and 60n described in the specification as a part of the original disclosure.

The instant application was filed on 19 April, 2001. On 16 July, 2001, Initial Patent Examination Division mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" stating that the application had been accorded a filing date of 19 April, 2001, but that Figures 34b, 59, and 60n described in the specification appeared to have been omitted. The Notice set a two month period for reply from the 16 July, 2001, mailing date.

In response to the Notices, petitioners timely filed the present petition on 17 September, 2001, accompanied by three (3) sheets of drawings containing Figures 34b, 59, and 60n. Petitioners assert that the three sheets of drawings are entitled to a filing date of 19 April, 2001, because they do not contain new matter and because the present application claims priority to Application No. 09/703,856, which includes Figures 34b, 59, and 60n.

The evidence is not persuasive. The record does not adequately show that the sheets of drawings were received at the USPTO on 19 April, 2001. It is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the

date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of MPEP 503.[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, due to the absence in the record of a postcard receipt itemized with respect to the drawings that bears a USPTO date stamp of 19 April, 2001, showing that three (3) sheets of drawings containing Figures 34b, 59, and 60n were received in the USPTO on 19 April, 2001, the application cannot be accorded a filing date of 19 April, 2001, with Figures 34b, 59, and 60n, as a part of the original disclosure.

Petitioners also state in the present petition that Figures 34b, 59, and 60n filed on 17 September, 2001, are substantially similar to Figures 34b, 59, and 60n of the drawings filed with prior application No. 09/703,856, the priority case for the instant application; however, the mere fact that the figures in the priority application may resemble the figures submitted on 17 September, 2001, is insufficient to accord a 19 April, 2001, filing date for the figures submitted 17 September, 2001. The mere reference to another application is not an incorporation of anything therein into the application containing such reference.[2]

In view of the above, the petition is **dismissed.**

This application has already been processed without the drawings filed on 17 September, 2001. The three (3) sheets of drawings containing Figures 34b, 59, and 60n filed on 17 September, 2001, will not be used for examination purposes, but will be retained in the application file.

Of course, petitioner may submit Figures 34b, 59, and 60n in the form of a preliminary amendment. If Figures 34b, 59, and 60n are

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[1] The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

[2] In re Seversky, 177 USPQ 144, 146 (C.C.P.A. 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980).

submitted as a preliminary amendment, it will be reviewed by the examiner for new matter.

As the petition resulted from applicant's filing error and not as a result of an error on the part of the Office, the petition fee will not be refunded.

Any request for reconsideration of this petition must be submitted within **two months** of the mailing date of this decision in order to be considered timely. See 37 CFR 1.181(f). Extensions of time under 37 CFR 1.136(a) are not permissible.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 19 April, 2001, using the application papers filed on that date. The copy of Figures 34b, 59, and 60n supplied with the present petition will not be processed or examined, but will be retained in the application file.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood, at (703)308-6918.

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
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ALEXANDRIA, VA 22313-1450
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OFFICE OF PETITIONS

CLEMENTS WALKER
1901 ROXBOROUGH ROAD
SUITE 300
CHARLOTTE, NC 28211

In re Application of	:	
EVERDELL et al	:	
Application No.: 09/838,320	:	DECISION ON PETITION
Filing Date: April 19, 2001	:	UNDER 37 CFR 1.137(B)
Attorney Docket No.: 10.0815	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 2, 2007, 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 Allowability mailed December 1, 2006, which set a three month statutory period for response. Accordingly, by operation of law, the above-identified application became abandoned on March 2, 2007.

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 corrected drawings; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowability mailed December 1, 2006 is accepted as having been unintentionally delayed.

This application is being referred to the Office of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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BRAD I. GOLSTEIN
METRO88
20755 PLUMMER STREET
CHATSWORTH, CA 91311

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MAR 2 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Michael B. Marks, et al.	:	
Application No. 09/838,330	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. BOX-2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 27, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

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

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee 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.

---

[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.

The proposed reply required for consideration of a petition to revive this application 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 submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

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

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

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

The centralized facsimile number is **(703) 872-9306**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley

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

BRAD I. GOLSTEIN
METRO88
20755 PLUMMER STREET
CHATSWORTH, CA 91311

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OCT 18 2005

OFFICE OF PETITIONS

In re Application of :
Michael B. Marks, et al. :
Application No. 09/838,330 : ON PETITION
Filed: April 20, 2001 :
Attorney Docket No. Box-2 :

This is a decision in response to the communication filed May 6, 2005, which is being treated as a renewed petition under 37 CFR 1.137(b) to revive the above-identified application.

The petition is **DISMISSED**.

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

It is noted that an amendment was included with the petition filed on May 6, 2005. However, the amendment is considered non-responsive, since it did not place the application in condition for allowance. See the attached Advisory Action. The proposed reply required for consideration of a petition to revive this application 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 submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

It is further noted that, while the requisite petition fee was paid on January 27, 2005, petitioner submitted a $750.00 petition fee with the present petition. Since, no further petition fee is required for consideration of the present petition, the $750.00 overpaid is subject to a refund.

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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.

Any request for refund must included a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

This decision is made without prejudice to reconsideration. However, 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)" and the required reply as noted above.

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

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

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

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

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

Attachment: 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

FULWIDER PATTON LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

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JAN 30 2007

OFFICE OF PETITIONS

In re Application of	:	
Michael B. Marks, et al.	:	
Application No. 09/838,330	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. MET88-68155	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed July 17, 2006, 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 June 29, 2004. A Notice of Abandonment was mailed on November 4, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination under 37 CFR 1.114; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay[1].

The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

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

The application file is being forwarded to Technology Center AU 2614, for further processing of the request for continued examination under 37 CFR 1.114 filed July 17, 2006.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[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. Although the statement contained in the petition varies from the language required by 37 CFR 1.137(b)(3), the statement will be 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 instant petition.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 11/1/06

TO SPE OF : ART UNIT 2123

SUBJECT : Request for Certificate of Correction for Appl. No.: 9/838429 Patent No.: 6996512 B2

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**.

Virginia Tolbert
Certificates of Correction Branch

703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: _____

PAUL RODRIGUEZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE — Art Unit 1/26/07

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 17

WILLIAM J. TUCKER
8650 SOUTHWESTERN BLVD. #2825
DALLAS, TX 75206

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APR 1 2 2004

OFFICE OF PETITIONS

In re Application of :
Sengupta :
Application No. 09/838,483 :
Filed: April 19, 2001 :
Attorney Docket No. JSF01-0047 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed January 30, 2004, 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 above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 23, 2003, 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 September 24, 2003.

Petitioner contends a response was timely filed and has proven the contention by supplying a showing in compliance with 37 CFR 1.8(b).

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(a) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee will be credited to petitioner's deposit account.

The file is being forwarded to the examiner in Technology Center 2800 for consideration of the response filed with the instant petition.

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 & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR **PATENT** FEE REFUND

1 Date of Request: 4-8-04

2 Serial/Patent # 09/838,483

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
X	Petition	15	1-30-04	$ 55
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 55

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 50--2697

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

Granted withdrawal of abandonment, so no 137a fee necessary

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Steven Bradley TITLE: Petitions Atty

SIGNATURE: [signature] PHONE: 306-5683

OFFICE: Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 4/2-04

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

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Paper No. 14

THE PROCTOR & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER – BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

COPY MAILED

JUL 0 1 2004

OFFICE OF PETITIONS

In re Application of	:	
Wang, Jiping	:	
Application No. 09/838,502	:	ON PETITION
Filed: April 19, 2001	:	
Attorney Docket No. 8053MX	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 9, 2004, 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 July 9, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on October 10, 2003. A Notice of Abandonment was mailed on February 18, 2004.

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

The Revocation of Power of Attorney or Authorization of Agent submitted on April 6, 2004, is hereby not accepted. The assignee failed to submit the Statement under 37 CFR 3.73(b), entitling the assignee to take action. In this regard, the assignee has not included the reel and frame number showing the chain of title from the inventor(s), of the patent application above, to the current assignee. The assignee may also submit any documentary evidence of a chain of title from the original owner to the assignee (*e.g.*, copy of an executed assignment). The documents submitted to establish ownership might be required to be recorded pursuant to § 3.11 in the assignment records of the Office as a condition to permitting the assignee to take action in a matter pending before the Office. A Statement under 37 CFR 3.73(b) is enclosed for petitioner's convenience.

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.

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 $475.00 extension of time fee submitted with the petition on April 9, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

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 continuing application No. 10/821,139.

The file is now being forwarded to the Files Repository.

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

cc: GREGORY J. HARTWIG
MICHAEL BEST & FRIEDRICH LLP
100 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-4108

Enclosure: Statement under 37 CFR 3.73(b)

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600 ATLANTIC AVENUE
BOSTON, MA 02210-2211

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JUL 1 4 2004

OFFICE OF PETITIONS

In re Application of	:
Geoffrey T. Haigh et al	:
Application No. 09/838,520	: DECISION GRANTING PETITION
Filed: April 19, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. A0312/7393 SJH	:

This is a decision on the petition under 37 CFR 1.137(b), filed May 10, 2004, to accept the unintentionally delayed payment of the issue fee in the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee on or before March 23, 2004, as required by the Notice of Allowance and Fee(s) Due mailed December 23, 2004. 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 MPEP 711.03(c)(III)(A)(1). Therefore, the mere filing of a Request for Continued Examination (RCE) pursuant to the provisions of 37 CFR 1.114 herein is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). In view of the authorization contained in the RCE to charge any additional fees due, the $1,330 issue fee will be charged to Deposit Account No.23-2825.

Petitioner is advised that the issue fee paid on 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]

---

[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,

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 payment of the issue fee; (2) the petition fee; and (3) an acceptable statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 2836 for processing of the concurrently filed RCE and Information Disclosure Statement.

Frances Hicks

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

---

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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BOSTON, MA 02210-2211

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JUL 1 4 2004

OFFICE OF PETITIONS

In re Application of	:
Geoffrey T. Haigh et al	:
Application No. 09/838,520	: DECISION GRANTING PETITION
Filed: April 19, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. A0312/7393 SJH	:

This is a decision on the petition under 37 CFR 1.137(b), filed May 10, 2004, to accept the unintentionally delayed payment of the issue fee in the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee on or before March 23, 2004, as required by the Notice of Allowance and Fee(s) Due mailed December 23, 2004. 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 MPEP 711.03(c)(III)(A)(1). Therefore, the mere filing of a Request for Continued Examination (RCE) pursuant to the provisions of 37 CFR 1.114 herein is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1). In view of the authorization contained in the RCE to charge any additional fees due, the $1,330 issue fee will be charged to Deposit Account No.23-2825.

Petitioner is advised that the issue fee paid on 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]

---

[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,

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 payment of the issue fee; (2) the petition fee; and (3) an acceptable statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 2836 for processing of the concurrently filed RCE and Information Disclosure Statement.

Frances Hicks

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

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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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HOWREY SIMON ARNOLD AND WHITE LLP
750 BERING DRIVE
HOUSTON, TX 77057

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MAR 21 2005

OFFICE OF PETITIONS

In re Application :
Gilson, et al. :
Application No. 09/838,544 : PATENT TERM ADJUSTMENT
Filed: April 20, 2001 :
Dkt. No.: 08157.0011 :

This is a decision on the "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT," filed August 27, 2004. This matter is being treated under 37 CFR 1.704(b) as an application for patent term adjustment timely filed.

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

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 160 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 129 days as indicated on the Determination of Patent Term Adjustment mailed July 21, 2004 to 38 days. Applicants have not set forth how applicants arrived at an adjustment of 38 days and requests that the Office identify how it arrived at its determination of PTA.

A review of the application history reveals that an adjustment of 221 days under 37 CFR 1.702(a)(1) can be attributed to the Office. In accordance with 37 CFR 1.703(a)(1), the adjustment began June 21, 2002, the day after the date that is fourteen months from the date the application was filed, and ended January 27, 2003, the date the non-final Office action was mailed. A further adjustment of 31 days under 37 CFR 1.702(a)(2) can be attributed to the Office in response to the Request for Continued Examination ("RCE") submitted November 19, 2003. In accordance with 37 CFR 1.703(a)(2), the delay began March 20, 2004, the day after the date that is four months after the date

the RCE was filed, and ended April 19, 2004, the day the non-final Office action was mailed.

Thus, at the time of Allowance, an adjustment of 252 days could be attributed to the Office. The adjustment of 252 days is reduced 92 days for applicants' failure to engage in reasonable efforts to conclude prosecution. The reduction began June 28, 2003, the day after the date that is three months after the date a non-final Office action was mailed, and ended July 28, 2003, the date a response to the non-final Office action was filed.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 160 days. Applicants are advised that at the time the issuance date is set by the Office of Patent Publications, the PTA will be routinely recalculated, including adjustments relative to 37 CFR 1.702(b).

The required application fee of $200.00 has been charged to Deposit Account No. 06-0916 as authorized in the instant application for PTA.

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

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

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAY 11 2007

OFFICE OF PETITIONS

In re Application of
Timothy M. Schmidl et al.
Application No. 09/838,606
Filed: April 19, 2001
Attorney Docket No. TI-31457

ON PETITION

This is a decision on the "Request to Withdraw Notice of Abandonment", filed April 13, 2007, which is treated under 37 CFR 1.181.

The petition to withdraw the holding of abandonment is **GRANTED**.

The application was held abandoned on May 23, 2006 for failure to file a timely response to the non-Final Office Action mailed February 22, 2006, which set a three (3) month shortened period for reply. No extensions of time in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed October 3, 2006.

Petitioner asserts that a proper response, was filed via facsimile transmission on June 28, 2006, with a two month extension of time request. In support, petitioner submits a copy of the reply said to have been filed, which includes a certificate of facsimile transmission pursuant to 37 CFR 1.8 and was acknowledged by the U.S. Patent and Trademark Office in an Auto-Reply Facsimile Transmission.

The evidence submitted corroborates a timely response to the non-Final Office Action. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No petition fee Is due and none has been charged. The fee for the two month extension of time in the amount of $450.00 has been charged to deposit account no. 20-0668.

This matter is being referred to Technology Center 2611 for appropriate action on the amendment filed June 28, 2006, a copy of which was submitted April 13, 2007 with the instant petition.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 28 2008

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

In re Application of	:	
Schmidl, et al.	:	
Application No. 09/838,606	:	DECISION
Filed: 189 April, 2001	:	
Attorney Docket No. TI-31457	:	

This is a decision on the petition filed on 17 April, 2008, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

Petitioner failed to reply timely and properly to the final Office action mailed on 9 August, 2007, with reply due absent an extension of time on or before 9 November, 2007.

The application went abandoned after midnight 9 November, 2007.

The Office mailed the Notice of Abandonment on 17 March, 2007.

On 17 April, 2008, Petitioner filed, *inter alia*, the instant petition (with fee) alleging unintentional delay under 37 C.F.R. §1.137(b), included therewith a reply in the form of an after-

final amendment (which the Examiner has indicated will be entered), and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

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

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[2],[3]

CONCLUSION

The instant petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center/AU 2611 for further processing in due course.

---

[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). See specifically, the regulations at 37 C.F.R. §10.18.

[2] 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).

[3] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a). And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the Technology Center/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the Technology Center/AU where that change of status must be effected—that does not occur in the Office of Petitions.

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[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

---

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

§1.2 Business to be transacted in writing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

KEITH D. NELSON
LOCKHEED MARTIN CORPORATION
BUILDING 220, MAIL STOP A08
P.O. BOX 49041
SAN JOSE, CA 95161-9041

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APR 2 8 2003

OFFICE OF PETITIONS

In re Application of	:	
David H. Miller et al	:	
Application No. 09/838,610	:	ON PETITION
Filed: April 19, 2001	:	
Attorney Docket No. PD-98-1008	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 31, 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 to File Missing Parts of Nonprovisional Application (Notice) mailed June 14, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 15, 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 Wan Laymon at (703) 305-9282.

The application file is being forwarded to the Office of Initial Patent Examination.

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

cc: THE LAW OFFICES OF KENNETH W. FLOAT
P.O. BOX 80790
RANCHO SANTA MARGARITA, CA 92688

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 18

FAY KAPLUN & MARCIN, LLP
150 BROADWAY
SUITE 702
NEW YORK, NY 10038

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DEC 1 0 2003
OFFICE OF PETITIONS

In re Application of
Haarala et al.
Application No. 09/838,618
Filed: April 19, 2001
Attorney Docket No. 10123/01101

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 25, 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 May 6, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on August 7, 2003.

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

The Notice of Appeal filed November 25, 2003, has been entered and made of record. Accordingly, 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.

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 authorization to charge the $950.00 extension of time fee submitted with the petition on November 25, 2003 was given subsequent to the maximum extendable period for reply, this fee is unnecessary and will not be charged to petitioner's deposit account.

The file is now being forwarded to Technology Center 3700 for further processing.

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

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FAY KAPLUN & MARCIN, LLP
150 BROADWAY
SUITE 702
NEW YORK NY 10038

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MAR 0 9 2006

OFFICE OF PETITIONS

In re Application of	:
Brett T. Haarala et al.	: DECISION GRANTING PETITION
Application No. 09/838,618	:
Filed: April 19, 2001	:
Attorney Docket No. 10123/01101	:

This is a decision on the petition filed January 3, 2006 under 37 CFR 1.137 (b) to revive the above-identified application.

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

The above-identified application became abandoned as a result of petitioner's failure to file a proper appeal brief within the time period provided in 37 CFR 1.192(a). A Notice of Appeal was filed December 28, 2004. On February 28, 2005, an appeal brief was filed. On April 25, 2005, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed May 2, 2005. On September 9, 2005 a second Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed and in response another Appeal Brief was filed on September 19, 2005. A third Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed on November 2, , 2005. In response an untimely Appeal Brief was filed November 10, 2005 and as such the Appeal was dismissed and the application abandoned.

Comes now petitioner with the instant petition to revive and an Appeal Brief under 37 CFR 41.37.

This application is being forwarded to Technology Center 2615 for review of the Appeal Brief filed January 3, 2006.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ANDREW J. DILLON
BRACEWELL & PATTERSON, LLP
SUITE 350 LAKEWOOD ON THE PARK
7600B NORTH CAPITAL OF TEXAS HIGHWAY
AUSTIN TX 78731

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JUN 09 2008

OFFICE OF PETITIONS

In re Application of
Christopher Davia
Application No.09/838,653
Filed: April 19, 2001
Attorney Docket No.: RAL920000081US1

ON PETITION

This is a decision on the petition filed April 16, 2008 under 37 CFR 1.137(a).

The petition to revive under 37 C.F.R. § 1.137(a) 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 C.F.R. § 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. § 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of June 17, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on September 18, 2004. A Notice of Abandonment was mailed on February 8, 2005.

Petitioner contends the non-final Office Action was never received. In support of petitioner's contention, a declaration from Vicky Filipowsky, docket administrator has been included.

Petition to revive under 37 CFR 1.137(a)

A grantable petition under 37 C.F.R. § 1.137(a) must be accompanied by:

(1) the required reply,[1]

(2) the petition fee,

(3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable, and

(4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

The instant petition lacks item (3).

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Director that the delay was unavoidable within the meaning of 37 C.F.R. § 1.137(a).

The Office may revive an abandoned application if the delay in responding to the relevant outstanding office requirement is shown to the satisfaction of the Director to have been "unavoidable." See, 37 C.F.R. § 1.137(a)(3). Decisions on reviving abandoned applications have adopted the reasonably prudent person standard in determining if the delay was unavoidable. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" is applicable to ordinary human affairs, and requires no more 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 (D.C. Cir. 1912); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r Pat. 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). A petition to revive an application as unavoidably abandoned cannot be granted where petitioner has failed to meet his or her burden of establishing the cause of the unavoidable delay. Haines v. Quigg, 673 F. Supp. 314, 5 USPQ2D 1130 (N.D. Ind. 1987).

Petitioner's argument of non receipt of the non-final Office Action has been considered but is not persuasive. The non-final Office Action was mailed to the correspondence address of record (Suite 350 Lakewood on the Park, 7600B North Capital of Texas Highway) on June 17, 2004 and returned to the Office on July 9, 2004. The Notice of Abandonment mailed on February 8, 2005 was returned to the Office on February 17, 2005. A review of the record shows that the address provided on the petition differs from the correspondence address of record.

Petitioner has not overcome the presumption that the Notice was not received because

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[1] 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.

petitioner failed to promptly change the correspondence address.

Where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply) an adequate showing of "unavoidable" delay will require a showing that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (see MPEP § 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. The lack of notification, or belated notification, to the U.S. Patent and Trademark Office of the change in correspondence address does not constitute unavoidable delay. See MPEP 711.03(c).

To the extent petitioner continues to receive mail at the correspondence address of record, a statement and evidence to that effect should be provided.

Accordingly, petitioner has failed to provide sufficient arguments that warrant the finding of unavoidable delay within the meaning of 37 CFR 1.137(a). Further petitioner has failed to establish the facts presented require the abandonment of the application to be withdrawn.

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.

Alternative Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

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

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

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

By facsimile: (571) 273-8300

By delivery service: U.S. Patent and Trademark Office
(FedEx, UPS, DHL, etc.) Customer Window, Mail Stop Petition
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

cc: Dillon & Yudell
8911 N. Capital of Texas Hwy., Suite 2110
Austin, Texas 78759

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

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MAR 1 0 2003

OFFICE OF PETITIONS

Jack E. Day
P.O. Box 25230
Portland OR 97298

In re Application of
Keith S. Wiliams
Application No. 09/838,686
Filed: April 19, 2001
Attorney Docket No. 099005

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b), filed July 11, 2002, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to respond in an appropriate and timely manner to the "Notice to File Corrected Application Papers" (the "Notice") mailed July 14, 2001, which set forth a two (2) month period for reply, beginning from its mailing date. No extensions of time under 37 CFR § 1.136(a) were obtained within the allowable period. Accordingly, this application became abandoned on August 15, 2001. The instant petition was filed before a Notice of Abandonment could be sent.

Petitioner responded appropriately to the Notice by filing, on July 11, 2002, the substitute drawings, substitute specification, and substitute abstract as required by the Notice.

The application is being forward to the Office of Initial Patent Examination for further processing.

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE P. Paras

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/5/06

TO SPE OF : ART UNIT 1635

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/838,718 Patent No.: 6746621

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: _____

Pete Paras
SPE

1635
Art Unit

OK TO ENTER: /DV/ (12/10/2009)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Busche**	§ Group Art Unit: **2129**
	§
Serial No.: **09/838,732**	§ Examiner: **Starks, Wilbert L.**
	§
Filed: **April 19, 2001**	§ Attorney Docket No.: **RSW920000182US1**
	§
For: **Method and System for Sample Data Selection to Test and Train Predictive Algorithms of Customer Behavior**	

REQUEST FOR CERTIFICATE OF CORRECTION OF APPLICANT'S MISTAKE

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

We would like to request a Certificate of Correction of Applicant's Mistake with regard to issued patent 7,080,052 B2.

There is an error with respect to the following data:

Title page, OTHER PUBLICATIONS, line 1:

delete http://www.megaputer.com/html/polyanalyst4.0html"and

insert --http://www.megaputer.com/html/polyanalyst4.0.html--.

Col. 16, line 36: after "distribution" delete "or" and insert --of--.

Col. 20, line 16: before "frequency" delete "arc" and insert --are--.

Col. 20, line 20: after "38. The" delete "method" and

insert --computer program product--.

A fee of $100.00 is believed to be required, this fee is being charged to 50-3157. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to Deposit Account No. 50-3157.

Respectfully submitted,

/Duke W. Yee/

Duke W. Yee
Registration No. 34,285
YEE & ASSOCIATES, P.C.
P.O. Box 802333
Dallas, Texas 75380
(972) 385-8777
ATTORNEY FOR APPLICANT

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. : 7,080,052 B2

APPLICATION NO.: 09/838,732

ISSUE DATE : Jul. 18, 2006

INVENTOR(S) : Busche

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:

Title page, OTHER PUBLICATIONS, line 1:
delete http://www.megaputer.com/html/polyanalyst4.0html"and
insert –http://www.megaputer.com/html/polyanalyst4.0.html–.

Col. 16, line 36: after "distribution" delete "or" and insert –of–.

Col. 20, line 16: before "frequency" delete "arc" and insert –are–.

Col. 20, line 20: after "38. The" delete "method" and insert –computer program product–.

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Yee & Associates, P.C.
P.O. Box 802333
Dallas, TX 75380

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091210

DATE : December 10, 2009

TO SPE OF : ART UNIT 2129

SUBJECT : Request for Certificate of Correction on Patent No.: 7080052

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:

/DAVID R VINCENT/
Supervisory Patent Examiner.Art Unit 2129

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)
6544118	2003-04-08	09838739	2001-04-19	59156-091

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. Haldiman/	Date (YYYY-MM-DD)	2007-07-03
Name	Robert C. Haldiman	Registration Number	45437

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. 6544118
Issue Date: April 8,2003
Application No. 09838739
Filed: April 19,2001
Attorney Docket No. 3932/59156-091

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

This is a decision on the electronic petition, filed July 3,2007 ,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 July 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

LERNER AND GREENBERG, PA
P.O. BOX 2480
HOLLYWOOD FL 33022-2480

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MAR 15 2005

OFFICE OF PETITIONS

In re Application of :
Gerald Deboy et al :
Application No. 09/838,743 :
Filed: April 19, 2001 :
Attorney Docket No. GR 99 P 2591 P :

ON PETITION

This is a decision on the petition under 37 CFR 1.55, filed November 5, 2004, for entry of priority papers submitted after the date the issue fee was paid.

The petition is granted.

Receipt is acknowledged of papers submitted under 35 USC 119.

As the priority data was not printed on the issued patent, petitioner can request a Certificate of Correction under 37 CFR 1.323 and pay the $100 fee thereof.

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

This matter is being referred to Files Repository.

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

Berlex Biosciences
Legal Department
15049 San Pablo Avenue
P.O. Box 4099
Richmond, CA 94804-0099

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SEP 0 3 2004

OFFICE OF PETITIONS

In re Application of :
Ted Lau, et. al. :
Application No. 09/838,785 :
Filed: April 20, 2001 :
Attorney Docket No. 51831AUSM1 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 3, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed December 17, 2003, 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 after midnight March 17, 2004.

In response, petitioner submitted with the instant petition $1,330 for the petition to revive fee, an Information Disclosure Statement (IDS), an amendment, a Request for Continued Examination (RCE) under 37 CFR 1.114, $770 for the RCE filing fee, and $950 for a three (3) months extension of time. However, 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 $950 extension of time submitted with the petition on August 3, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The petition is **GRANTED**.

It is not apparent whether the correspondence address has changed. 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 referred to Technology Center Art Unit 1642, for processing the Request for Continued Examination under 37 CFR 1.114, and for further review of the amendment filed with the instant petition.

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

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

CC: Berlex Biosciences
2600 Hilltop Drive
Richmond, CA 94804

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York, NY 10112

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DEC 2 1 2007

OFFICE OF PETITIONS

In re Application of
Volkmar A. Sohner
Application No. 09/838,793
Filed: April 20, 2001
Attorney Docket No. 12637.231

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b); filed January 31, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure s to timely pay the issue and publication fees on or before August 15, 2003, as required by the Notice of Allowance and Fee(s) Due, mailed May 15, 2003, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on August 16, 2003.

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

The file record shows that 3 years and 5 months elapsed between the date of abandonment and the filing of the instant petition. A Notice of Abandonment was mailed to Chadbourne & Parke

LLP on September 16, 2003. Due to the extended delay in filing the petition to revive, further information as to the cause of the delay between the date the applicant was first notified that the application was abandoned and the date a 37 CFR 1.137(b) petition was filed is required, along with information as to how such delay was "unintentional." Petitioner must submit:

(A) further information as to when the applicant (or applicant's representative) first became aware of the abandonment of the application; and

(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant (or applicant's representative). See MPEP 711.03(c).

Please provide further information in regards to the above within TWO (2) MONTHS from the mail date of this decision.

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

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

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

The centralized facsimile number is **(571) 273-8300.**

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Chadbourne & Parke LLP
30 Rockefeller Plaza
New York NY 10112

MAILED

MAR 12 2009

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Volkmar A. SOHNER :
Application No. 09/838,793 :
Filed: April 20, 2001 :
Attorney Docket No. 12637.231 :

This is a decision on renewed the petition under 37 CFR 1.137(b), filed January 2, 2009, 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 May 15, 2003, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on August 16, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of payment of the Issue Fee; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the Issue Fee payment is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Felix O. Figueroa at (571) 272-6052 or in his absence, the undersigned at (571) 272-7099. .

The application file is being referred to the office of Data Management.

for David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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JUL 13 2009

OFFICE OF PETITIONS

In re Application of

Dubois, et al.

Application No. 09/838,809

Filed: April 20, 2001

Attorney Docket No. 04286.00010

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed June 9, 2009.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on August 4, 2008, after it was believed that a timely appeal brief was not filed after the mailing of the Notice of Panel Decision from Pre-Appeal Brief Review on June 11, 2008. The notice set an extendable period of one month from its mailing date in which to file an appeal brief, which would end on July 11, 2008, or the balance of the two month period following the filing of the Notice of Appeal which expired August 3, 2008, whichever was longer. The receipt date for the Notice of Appeal, June 3, 2008, is being used in determining the timeliness of the Appeal Brief filed January 5, 2009, because the period in which to file an appeal brief was longer based on receipt date of the Notice of Appeal. A Notice of Abandonment was mailed January 5, 2009, stating that no response was received.

A review of the application file history reveals that an Appeal Brief was filed January 5, 2009, with a request for an extension of time within the fifth month. The Notice of Panel Decision from Pre-Appeal Brief Review states explicitly that "...the time period for filing of the appeal brief is extendable under 37 CFR 1.136 based upon the mail date of this decision or the receipt date of the Notice of Appeal, as applicable." Pursuant to 37 CFR 1.136(a)(1), the time period for filing an Appeal Brief after the mailing of the Notice of Panel Decision from Pre-Appeal Brief Review, or in this case the date the Notice of Appeal was received, is extendable five additional months as the time period for filing an Appeal Brief is not set by statute and does not fall under of the exceptions provided in 37 CFR 1.136(a)(1). Based on the aforementioned, it appears that the application was improperly held abandoned as the Appeal Brief was received prior to expiration of the maximum period for reply. The holding of abandonment is withdrawn, accordingly.

Further inquires regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded Technology Center 1700, GAU 1794 for further processing.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DEC 20 2004

MERCHANT & GOULD, PC
P. O. BOX2903
MINNEAPOLIS, MN 55402-0903

#16

In re Application of	:
Faith M. Uckun	:
Serial No.: 09/838,821	: PETITION DECISION
Filed: April 19, 2001	:
Attorney Docket No.: 12152.77USD1	:

This is in response to the petition under 37 CFR 1.181, filed September 20, 2004, for withdrawal of abandonment based on incorrect mailing address.

A review of the file history shows that this application was filed by applicant's representatives, Merchant and Gould, as noted above, but failed to contain an executed declaration. A Notice of Missing Parts was mailed to Merchant and Gould. In reply Merchant & Gould filed a copy of a declaration from a parent application which contained a Power of Attorney to Schwegman, Lundberg, Woessner & Kluth (hereinafter Schwegman). In processing the completed application the correspondence was changed to Schwegman in view of the declaration. The examiner then mailed a first Office action to Schwegman on May 23, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the examiner mailed a Notice of Abandonment to Schwegman on February 5, 2004.

Applicant claims that a Power of Attorney to Merchant & Gould was filed with the application and that the Office erred in directing correspondence to Schwegman. Applicant is correct that a Power of Attorney to Merchant & Gould was filed in this application at the time the application was filed. However the filing of a signed declaration at a later date with a different Power of Attorney superceded the first Power of Attorney and the Office properly changed the correspondence address in response to the newly filed declaration even though the date of execution thereof was earlier than the execution date of the new Power of Attorney submitted with the application. The Office error was a direct result of applicant's actions. However, applicant's error appears to have been inadvertent. In view of the above facts, the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

As applicant has obtained a copy of the last Office action and submitted a reply thereto the application will be forwarded to the examiner for further action

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.

Bruce M. Kisliuk
Director, Technology Center 1600

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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LAW OFFICE OF ROXANA H. YANG
P O BOX 400
LOS ALTOS, CA 94023

RECEIVED
JUL 25 2005
OFFICE OF PETITIONS

In re Application of
Balas Natarajan Kausik et al
Application No. 09/838,822
Filed: April 19, 2001
Attorney Docket No. 053560-0004

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

This is a decision on the petition, filed July 25, 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 March 24, 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]

It does not appear that the instant petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Mr. Timothy E. Bianchi* appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If Mr. Bianchi desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Bianchi, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

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

---

[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).*

This matter is being referred to Technology Center AU 2176 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

cc:

Timothy E. Bianchi
Schwegman, Lundberg Woessner & Kluth PA
P O Box 2938
Minneapolis, MN 55402

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DIW 05-04

Paper No. 8

BAKER BOTTS L.L.P
44TH FLOOR
30 ROCKEFELLER PLAZA
NEW YORK NY 10112-4498

COPY MAILED

MAY 19 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Tarek A. Ramadan :
Application No. 09/838,862 :
Filed: 20 April, 2001 :
Atty Dkt No. AP32562-070050.1370 :

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on 23 April, 2004.

The petition is **GRANTED**.

This application became abandoned on 15 August, 2001, for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, which set a two (2) month shortened period for reply. Notice of Abandonment was mailed on 15 September, 2003.

The present petition is accompanied by an executed oath or declaration and payment of the late-filing surcharge.

The application is being forwarded to the Office of Initial

---

[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. 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)).

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

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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Paper No.

BAKER BOTTS L.L.P
44TH FLOOR
30 ROCKEFELLER PLAZA
NEW YORK NY 10112-4498

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FEB 08 2007

OFFICE OF PETITIONS

In re Application of	:	
Ramadan et al.	:	DECISION ON
Application No. 09/838,862	:	PETITION
Filed: April 20, 2001	:	
Atty Docket No. A32562-070050.	:	
1370	:	

This is a decision on the PETITION TO ACCEPT SIGNATURE OF JOINT INVENTORS ON BEHALF OF NON-SIGNING INVENTOR UNDER 37 C.F.R. § 1.183 AND STATEMENT UNDER 37 C.F.R. § 1.47, filed September 14, 2006 (certificate of mailing dated Monday, September 11, 2006). This petition is properly treated as a petition under § 1.183 for acceptance of a supplemental declaration without the signatures of all inventors as required by § 1.67.

The petition is **GRANTED**.

On March 9, 2006, the Office mailed a non-final Office action, which required applicants to file a substitute oath or declaration. This Notice set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a).

In response, applicants filed a supplemental declaration executed by joint inventors Richard Osgood and Robert Scarmozzino on behalf of themselves and on behalf of joint inventor Tarek Ramadan; and the instant petition for acceptance of the declaration. This response was made timely by an accompanying petition (and fee) for extension of time for response within the third month. By declaration of patent paralegal Kristina Levites petitioners have shown that inventor Ramadan is "unavailable" to execute the supplemental

declaration. Joint inventor Ramadan signed the original declaration. However, efforts to reach the inventor to sign the supplemental declaration at his last known address in Egypt were unsuccessful. The petition also includes the petition fee and a statement of the last known address of inventor Ramadan.

In view of the foregoing, it is concluded that waiver of the requirement that the supplemental declaration be signed by all of the joint inventors is appropriate.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

RONALD ABRAMSON
PETER A. SULLIVAN
HUGHES HUBBARD & REED LLP
ONE BATTERY PARK PLAZA
NEW YORK NY 10004-1482

COPY MAILED
AUG 19 2003
OFFICE OF PETITIONS

In re Application of	:
Neto et al.	: DECISION ON PETITION
Application No. 09/838,863	: UNDER 37 CFR 1.78(a)(3)
Filed: 20 April, 2001	:
Atty Docket No. 70317.1200	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on 11 April and supplemented on 31 July, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed PCT Application No. PCT/BR99/00084, filed on 13 October, 1999.

The petition is **GRANTED**.

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

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;[1]
>
> **(2)** the surcharge set forth in § 1.17(t); and

[1]Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (*see* § 1.14).

> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The present pending application was filed on 20 April, 2001, and was copending with the above-noted, prior-filed international application, at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, which was filed on 31 July, 2003 with the present petition under 37 CFR 1.78(a)(3).

The present nonprovisional application was filed after 29 November, 2000, and the claim for priority herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed nonprovisional was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. § 120. Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim to benefit to prior-filed Application No. PCT/BR99/00084 is granted as of the date of filing the petition.

The granting of the petition to accept the delayed benefit claim to the prior applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior applications. In order for the instant application to be entitled to the benefit of the prior applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

The priority claim has been entered in Office PALM records. A corrected filing receipt is enclosed for petitioner's convenience.

The application is being forwarded to Technology Center 3700 for processing the amendment filed on 31 July, 2003, and for consideration by the examiner of the claim under 35 U.S.C. § 365(c) and 37 CFR 1.78(a)(3) for the benefit of the above-noted, prior filed nonprovisional application.

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

Encl: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

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

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OFFICE OF PETITIONS

In re Application of	:	
Debra Sue Caswell et al	:	
Application No. 09/838,867	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 8079M	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 29, 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 Notice to File Missing Parts of Application (Notice) mailed June 14, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 14, 2001.

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 $1,440.00 extension of time submitted with the petition on October 29, 2002 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 Wan Laymon at (703) 305-9282.

The application file is being forwarded to the Office of Initial Patent Examination.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 12/04/2006

Paper No.: _____

TO SPE OF : ART UNIT 2600 (2642)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,564,051

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 – 2900 South Tower ste.9A43A
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.

***ok to enter replacement drawing figures as req. in COCIN in Madras?**

Thank You For Your Assistance

Ernest C. White, LIE (703) 308-9390x122
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:

EDWARD F. URBAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
SPE

2618
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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PILLSBURY WINTHROP LLP
Suite 2800
725 South Figueroa
Los Angeles CA 90017-5406

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AUG 2 6 2004

OFFICE OF PETITIONS

In re Application of	
Harman and Pasquali	
Application No. 09/838,927	DECISION ACCORDING STATUS
Filed: April 19, 2001	UNDER 37 CFR 1.47(a)
Attorney Docket No. 79113-277233	
For: SYSTEM AND METHOD FOR PROVIDING A DYNAMIC CONTENT WINDOW WITHIN A WINDOWS-BASED CONTENT MANIFESTATION ENVIRONMENT PROVIDED IN A BROWSER	

This is in response to the petition under 37 CFR 1.47(a), filed July 16, 2001. The Office of Petitions recently received the petition for a decision on the merits. The Office apologizes for any inconvenience.

The petition is granted.

Petitioner has shown that, Sandro Pasquali, 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 statement of facts of Eric Chen establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the present petition. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Sandro Pasquali
10 Tobermory Drive #112
Toronto, Ontario M3N 2Y5
Canada **AIR MAIL**

COPY MAILED
AUG 2 6 2004
OFFICE OF PETITIONS

In re Application of :
Harman and Pasquali :
Application No. 09/838,927 :
Filed: April 19, 2001 :
Attorney Docket No. 79113-277233 :
For: SYSTEM AND METHOD FOR :
PROVIDING A DYNAMIC CONTENT WINDOW :
WITHIN A WINDOWS-BASED CONTENT :
MANIFESTATION ENVIRONMENT PROVIDED :
IN A BROWSER

LETTER

Dear Mr. Paquali:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 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 1-800-972-6382 (outside the Washington D.C. area).

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

PILLSBURY WINTHROP LLP
Suite 2800
725 South Figueroa
Los Angeles CA 90017-5406

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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PILLSBURY WINTHROP LLP
SUITE 2800
725 SOUTH FIGUEROA
LOS ANGELES, CA 90017-5406

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OFFICE OF PETITIONS

In re Application of :
Seth Harman, et al. :
Application No. 09/838,927 :
Filed: April 23, 2001 :
Attorney Docket No. 79113-277233 :

ON PETITION

This is a decision on the petition, filed July 11, 2008, to revive the above-identified application under 37 CFR 1.137(b).

The petition is noted signed by a registered attorney or agent of record. However, in accordance with 37 CFR 1.34(a), the signature of Michael J. Strauss appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence regarding this application will be mailed solely to the address of record.

The petition is **GRANTED**.

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 January 9, 2008, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on April 10, 2008. This decision precedes the mailing of a Notice of Abandonment. On July 11, 2008, the present petition was filed.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While the statement is not made by an attorney of record, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Notice of Appeal and the appeal fee of $255; (2) the petition fee of $770; and (3) an adequate statement of unintentional delay.

The two-month period for filing an appeal brief under 37 CFR 41.37 (accompanied by the fee required by 37 CFR 41.20(b)(2)), runs from the date of this decision.

This application is being referred to Technology Center AU 3622 to await the filing of an appeal brief or for such other appropriate reply as may be submitted to continue prosecution of the application.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

cc: MICHAEL J. STRAUSS
FULBRIGHT & JAWORSKI, L.L.P.
801 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004

UNITED STATES PATENT AND TRADEMARK OFFICE

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SUITE 2800
725 SOUTH FIGUEROA
LOS ANGELES, CA 90017-5406

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JUL 0 6 2009

OFFICE OF PETITIONS

In re Application of
Seth Harman et al
Application No. 09/838,927
Filed: April 19, 2001
Attorney Docket No. 79113-277233

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent under 37 C.F.R. § 1.36(b) or 37 C.F.R. § 10.40 filed May 8, 2009.

The request is **NOT APPROVED**.

A review of the file record indicates that Jody C. Bishop does not have power of attorney in this patent application nor is there any statement or evidence of record of employment in or otherwise being engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Jody C. Bishop
Fulbright & Jaworski LLP
2200 Ross Avenue, Suite 2800
Dallas, TX 75201-2784

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PVF -- PARC
c/o PARK, VAUGHAN & FLEMING LLP
2820 FIFTH STREET
DAVIS CA 95618-7759

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OFFICE OF PETITIONS

In re Patent No. 7,296,042	:	
Application No. 09/838,933	:	
Filed: April 20, 2001	:	ON PETITION
Issued: November 13, 2007	:	
Attorney Docket No. PARC-DA1083	:	

This is a decision on the petition filed November 29, 2007, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name and address of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

The patent file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3206. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Liana Walsh
Petitions Examiner
Office of Petitions

[1] *See* MPEP 1309, subsection II; and Official Gazette of June 22, 2004.

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Wagner, Murabito & Hao LLP
Third Floor
Two North Market Street
San Jose, CA 95113

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DEC 21 2004

Technology Center 2100

In re Application of:
Diaz NESAMONEY, et al.
Application No.: 09/838,961
Filed: April 19, 2001
For: TAXONOMY OF BUSINESS METRICS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed September 15, 2004.

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 withdrawal 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**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

cc: INFORMATICA CORPORATION
2100 Seaport Blvd.
Redwood City, CA 94063

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ALEXANDRIA, VA 22313-1450
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Paper No. 4

Attn: James M. Stipek, Esq.
Lathrop & Gage L.C.
2345 Grand Boulevard, Suite 2800
Kansas City MO 64108

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NOV 24 2003
OFFICE OF PETITIONS

In re Application of	:	
CHARLES A. JENNINGS,	:	
Application No. 09/838,993	:	DECISION GRANTING PETITION
Filed: April 20, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 392531	:	

This is a decision on the petition, filed October 16, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the present nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of an application filed in an 18 month publication country on January 18, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) has been rescinded. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, which sets forth the projected publication date of March 4, 2004, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2155 for examination in due course.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing

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700 W. 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112-1802

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JAN 3 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Charles A. Jennings	:	
Application No. 09/838,993	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 392531	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 2, 2005, 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 May 25, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 26, 2005.

The Revocation of Power of Attorney and Change of Correspondence Address has been accepted and recorded.

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

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

This application matter is being forwarded to the Publishing Division for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions

cc: William A. Rudy
LATHROP & GAGE, LC
2345 Grand Boulevard
Suite 2400
Kansas City, MO 64108

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MAR - 2 2004

Paper No.11

In re Application of
David A. Holcomb *et al*
Application No. 09/839,027
Filed: April 19, 2001
Attorney Docket No. 200017.432

: DECISION ON PETITION

This is a decision on the petition filed by on November 24, 2003 by which petitioners request withdrawal of the holding that this application stands abandoned for failure to pay the issue fee. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that the issue fee was not paid because the Notice of Allowance mailed on June 30, 2003 was not received. Petitioners have made a showing pursuant to the Notice published at 1156 0G 53, as discussed in MPEP § 711.03(c), in order to establish nonreceipt of the Notice of Allowance

Petitioners' showing of nonreceipt of the Notice of Allowance mailed June 27, 2003 is accepted. Therefore, due to the nonreceipt of the Notice of Allowance, the application is not considered to have been abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner for Technology Center 3700 for remailing a new Notice of Allowance, together with a complete copy of the Notice of Allowability and all attachments thereto. The period for payment of the Issue Fee will run THREE MONTHS from the date upon which the new Notice of Allowance is remailed, and cannot be extended pursuant to 37 CFR 1.136. **The period for reply to certain requirements that may be set forth on the attached Notice of Allowability with respect to the submission of an oath or declaration, and with respect to certain requirements pertaining to the submission of formal drawings or drawing corrections, can no longer be extended. See 37 CFR 1.85(c), and 37 CFR 1.136(c) as amended, effective November 7, 2000, published at 65 Federal Register 54670 and 54674, respectively.**

After the papers are remailed, the application will be forwarded to the Office of Patent Publication for processing into a patent. The issue fee has not been paid.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Seed Intellectual Property Law Group PLLC
701 Fifth Avenue
Suite 6300
Seattle, WA 98104-7092

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

AUG 27 2003

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RPG

Paper No. 8

In re application of
Gary P. Craun, et al.
Serial No. 09/839,049
Filed: April 23, 2001
For: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE COALESCING ORGANIC SOLVENT

DECISION ON PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed April 16, 2003 for failure to pay required issue fee. Applicants assert that Notice of Allowance and Issue Fee Due form for the captioned patent application were never received.

DECISION

Since petitioner asserts that the Notice of Allowance and the Issue Fee Due form were not received, the 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 indicates that the request does not have merit. The evidence is insufficient to establish that applicants did not receive the Notice of Allowance and Issue Fee Due form. Applicant's docket records indicate that the Examiner's Amendment was in fact received, (dated October 31, 2002, which was the date on the last page of the office action), which is part of the Notice of Allowance and Issue Fee Due. An examiner's amendment would not have been sent, in any other occcassion, besides a Notice of Allowance.

Therefore, since it appears from a search of present file and receipt of the examiners amendment, that no error has been made on the part of the USPTO, the Notice of Abandonment dated March 17, 2003 is maintained.

The Petition is **DENIED.**

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Kenneth J. Stachel
Law Department
The Glidden Company
925 Euclid Avenue
900 Huntington Building
Cleveland, Ohio 44115

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Mailed: 4/19/05

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Paper Number

In re application of
Gary Craun et al.
Serial No. 09/839,049
Filed: April 23, 2001
For: ODOR FREE POLYLACTIC ACID MODIFIED AQUEOUS EMULSION PAINTS FREE OF VOLATILE COALESCING ORGANIC SOLVENT

DECISION ON PETITION

This is a response to the SECOND PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION September 28, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed Match 17, 2003, be withdrawn since the applicant did not receive the Notice of Allowance and Fee(s) Due mailed November 05,2002 .

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Notice of Allowance and Fee(s) Due, mailed November 05, 2002. The evidence provided includes a statement by the petitioner that the Notice of Allowance and Fee(s) Due, mailed November 05,, 2002 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Notice of Allowance and Fee(s) Due was not received. Also provided is a copy of the attorney's application docket records where the Notice of Allowance and Fee(s) Due would have been posted had it been timely received; indicating that the Examiner's Amendment was posted on October31, 2002. The previous decision mailed August 27, 2003 indicated that an Examiner's Amendment would have been part of the Notice of Allowance and Issue Fee Due and thus applicant must have received the Notice of Allowance and Issue Fee Due. However, further evidence that such was only received on April 16, 2003 by facsimile transmission from the Patent Office and the date of October 31, 2002 was entered only to reconstruct the file history by applicant has been submitted.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Notice of Allowance and Fee(s) Due originally mailed November 05, 2002 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Kenneth J. Stachel
The Glidden Company
925 Euclid Avenue
900 Huntington Building
Cleveland, OH 44115

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CROMPTON, SEAGER & TUFTE, LLC
1221 NICOLLET AVENUE
SUITE 800
MINNEAPOLIS MN 55403-2420

2/15/08

In re Application of:
Ye, Ting Tina et al
Serial No.: 09/839,065
Filed: April 20, 2001
Docket: 1001.1471101
Title: MICROCATHETER WITH IMPROVED DISTAL TIP AND TRANSITIONS

DECISION ON PETITION

This is a decision on the petition filed on Apr. 27, 2004 by which petitioner requests withdrawal the finality of the Office action of Jan. 28, 2004 and issue a new complete Office action. The petitioner states that the final rejection is premature because it was incomplete. The petition is being considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

In the petition, petitioner argues that the final action of Jan. 28, 2004 is not a proper final Action as the examiner fails to explain why and under what rule the examiner is interpreting "shapeable by thermoforming techniques" as a product-by-process limitation. Petitioner requests the finality of the Office Action be withdrawn and a new non-final Office action be issued.

The record shows that:

1) On Aug. 12, 2003, the examiner issued a non-final Office action rejecting all claims under 35 U.S.C. 102(e) and 103(a) based on Samson et al (U.S. Pat. 6,090,099) and in view of Nita et al (U.S. Pat. 5,951,539). The examiner also interpreted and held that some claim limitations are directed to a product by process limitation.
2) On Nov. 12, 2003, the applicant filed a response without any amendment to the claims and argued in essence that Samson et al patent does not disclose all the elements of independent claim 1.
3) On Jan. 28, 2004, the examiner issued a final Office action rejecting all claims under 35 U.S.C. 102(e) and 103(a) based on Samson et al (U.S. Pat. 6,090,099) and in view of Nita et al (U.S. Pat. 5,951,539). The final rejection was essentially the same as the non-final Office action.
4) On Apr. 27, 2004, the current petition was filed to request the finality of the Office Action be withdrawn and a new non-final Office action be issued.

Discussion and Analysis

With regard to the alleged rejection, this appears to be a disagreement in claim interpretation which is an appealable issue rather than a petitionable matter, presently pending at the Board of Appeals and Interferences (37 CFR 1.181(a)(1))[1]. It is noted that the examiner had responded to the applicant's/appellant's assertions in the Examiner's Answer to which appellant was able to further respond in a Reply Brief.

A review of the record shows that the instant petition was filed more than two months after the mailing date of the final Office action of Jan. 28, 2004. Pursuant to 37 CFR 1.181(f)[2], the petition is not timely filed since the petition was not filed within two months of the Office action to which the complaint refers. It is, therefore, dismissed as untimely.

Conclusion

In view of the record, petitioner's request to withdraw the finality of the Office action dated Jan. 28, 2004 is dismissed as untimely.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

The application is being forwarded to the Supervisory Patent Examiner of Art Unit 3763 for completing the remainder of the tasks as set forth in the Order Returning Undocketed Appeal to Examiner.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITION DISMISSED.

Frederick R. Schmidt, Director
Technology Center 3700

---

[1] 37 CFR 1.181(a)(1) states: Petition may be taken to the Director: From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination preceding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court.

[2] 37 CFR 1.181(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.

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BERRY & ASSOCIATES P.C.
9255 SUNSET BOULEVARD
SUITE 810
LOS ANGELES CA 90069

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In re Application of	:	
Maurya et al.	:	
Application No. 09/839066	:	
Filing or 371(c) Date: 04/20/2001	:	ON PETITION
Attorney Docket Number:	:	
35451/108 (3569.Palm)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 2007, to revive the above-identified application. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed March 22, 2007. The Office action set a three (3) month period for reply from the mail date of the Office action. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on June 23, 2007. A Notice of Abandonment was mailed October 9, 2007.

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

The application is being referred to Technology Center Art Unit 2155 for processing of the Amendment filed with the petition in due course.

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

Derek L. Woods
Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Patent No. 6,859,655
Issue Date: February 22, 2005
Application No. 09/839,075
Filed: April 20, 2001
Attorney Docket No.

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.378(c), filed April 26, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on February 22, 2009, for failure to pay the three 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.

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.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

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

The patent file is being referred to Files Repository.

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

cc: MATTHEW T. BYRNE
11 BROADWAY, STE. 865
NEW YORK, NY 10004

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ALBERT WAI-KIT CHAN, ATTN AT LAW
DEHENG CHEN CHAN, LLC
141-07 20TH AVE., SUITE 604
WHITESTONE NY 11357

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OFFICE OF PETITIONS

In re Application of	:	
Lin et al.	:	DECISION ON PETITION
Application No. 09/839,078	:	
Filed: 20 April, 2001	:	
Atty Docket No. 29876/37280	:	

This is a decision on the petition filed on 5 July, 2005, styled under 37 CFR 1.48(a) and 1.47(a) which is being treated as (a) a petition under 37 CFR 1.48(a)(1) requesting that a person be added as inventor and (b) a petition under 37 CFR 1.183 requesting waiver of 37 CFR 1.63 and 1.67, which require that a named inventor execute a supplemental declaration.[1]

The petition is **GRANTED**.

On 20 April, 2001, the above-identified application was filed. The original application papers included, a declaration under 37 CFR 1.63 was filed naming Ping Sheng Zhang and Hai Ping Cao as joint inventors.

On 5 July, 2005, the present petition was filed, whereby petitioners seek to add Hai Lin and Xufeng Xu as joint inventors. Petitioners further state that joint inventors Zhang and Cao have failed to sign the declaration naming the actual inventors as required by 37 CFR 1.48(a)(3).

Petition Under 37 CFR 1.48(a) and 1.183

37 CFR 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

---

[1] Petitioners should note that where, as here, all of the named inventors executed an oath or declaration, 37 CFR 1.47 is not applicable. Rather, a waiver under 37 CFR 1.183 of 1.63 and 1.67 is required when a named inventor refuses or cannot be located to execute a supplemental declaration.

(1) a petition including a statement from each person being added and 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.

As a result of papers filed on 5 July, 2005, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48(a)(2).

In view of the efforts recounted in the petition to obtain the signature of Ping Sheng Zhang and Hai Ping Cao on the supplemental declaration as required by 37 CFR 1.63, it is agreed that justice would be served by waiving the requirement for his signature on the supplemental declaration required by 37 CFR 1.63 and 1.67.

The inventorship of this application has been changed by the addition of: Hai Lin, Hangzhou, China, and Xufeng Xu, Hangshou, China.

Office PALM records have been corrected to reflect the correct inventorship of the application. A corrected Filing Receipt is enclosed for petitioners' records.

The application is being referred to Technology Center Art Unit 3635 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

Encl: Corrected Filing Receipt

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ALBERT WAI-KIT CHAN, ATTN AT LAW
DEHENG CHEN CHAN, LLC
141-07 20TH AVE., SUITE 604
WHITESTONE NY 11357

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OFFICE OF PETITIONS

In re Application of	:	
Lin et al.	:	DECISION GRANTING PETITION
Application No. 09/839,078	:	UNDER 37 CFR 1.55(c)
Filed: 20 April, 2001	:	
Atty Docket No. 29876/37280	:	

This is a decision on the petition under 37 CFR 1.55(c), filed 16 May, 2005, for acceptance of an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of the filing date of foreign Chinese Application No. 00254152.1, filed on 8 October, 2000.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;

(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 CFR 1.76(b)(6)**;

(3) the surcharge as set forth in 37 CFR 1.17(t);

(4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional); and

(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on 20 April, 2001, which is after November 29, 2000 and within 12 months of 8 October, 2000 (the filing date of the foreign application to which benefit is now being claimed). On 16 May, 2005, an ADS and an executed supplemental declaration and power of attorney were received which identify the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1370.00 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) is **granted**.

A Corrected Filing Receipt which reflects the above-noted foreign application accompanies this decision on petition.

This application is being forwarded to Technology Center AU 3635 for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a)-(d).

Any inquiries directly pertaining to this matter may be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 9/2/07

DATE : 07/24/2007

TO SPE OF : ART UNIT **3600 (2881)**

SUBJECT : Request for Certificate of Correction on Patent No.: **7,152,379**

Attn: Yvonne M. Horton

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 enter US Reference 6,182,413 B1 as requested in C of C?

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:

RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER

3635

SPE Art

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

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DEC 1 2 2006
OFFICE OF PETITIONS

In re Patent of Nagai et al.	:	
Patent No. 6,870,865	:	DECISION ON REQUEST FOR
Issue Date: March 22, 2005	:	RECONSIDERATION OF
Application No. 09/839,139	:	PATENT TERM ADJUSTMENT
Filing Date: April 23, 2001	:	and
Atty Docket No. 00862.022205	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION

This is a decision in response to the "Request for Reconsideration of Patent Term Adjustment Under 37 C.F.R. §1.705(d)" filed April 27, 2005, which in essence requests that the Patent Term Adjustment for the above-identified patent be increased to 150 days.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**.

Any response to 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 NOT permitted. Any response should include a cover letter entitled "Renewed Request under 37 CFR 1.705(d)."

For the reasons stated herein, the patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of zero **(0)** days.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) mailed with the Notice of Allowance on August 13, 2004, stated the patent term adjustment to date was 68 days.
The patent issued on March 22, 2005. The printed patent shows a patent term adjustment of 58 days.

The Office has conducted a review of the entire prosecution history. The review indicates the patented should have shown a patent term adjustment of zero (0) days.

It is undisputed that the reduction of 31 days pursuant to 37 CFR 1.704(b) is correct for patentee taking until April 17, 2003, three months and 31 days later, to respond to the non-final Office action mailed December 17, 2002.

A reduction of 19 days is proper pursuant to 37 CFR 1.704(b) which provides for a reduction in patent term when an applicant takes more than 3 months to respond to the Office action. A final Office action was mailed July 2, 2003. An RCE, request for extension of time, and amendment were filed 3 months and 19 days later on October 21, 2003.

A reduction of 63 days is proper pursuant to 37 CFR 1.704(c)(8) which provides for a reduction in patent term when an applicant files a supplemental reply or other paper after a reply has been filed. An RCE, request for extension of time, and amendment were filed on October 21, 2003. An IDS was filed 63 days later on December 23, 2003.

A reduction in patent term is appropriate for the "Second Request for Corrected Official Filing Receipt" and the "Third Request for Corrected Official Filing Receipt" which were filed after the mailing of the Notice of Allowance. 37 CFR 1.704(c)(10) states,

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

The Office has given examples of papers which not result in a reduction in term adjustment pursuant to 37 CFR 1.704(c)(10).[1] Requests for Corrected Official Filing Receipts are not among the examples. The second and third requests were in essence

[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).

duplicates of the first request. The Office has recognized the filing of duplicate papers delays the issuance process. The Office has stated, "Duplicate filing of papers only cause delays and confusion, unless the duplicate has been specifically required by the Office."[2] The second and third Requests were also similar, in nature, to status inquiries since petitioner was essentially seeking the status of the originally filed Request for Corrected Official Filing Receipt. The Office has determined status inquiries filed after allowance should result in a reduction in patent term.[3]

The facts fail to indicate patentees could not have filed the second and third Requests *prior to* the mailing of the Notice of Allowance. The first Request for Corrected Filing Receipt was filed September 27, 2001. The request noted the Office had incorrectly entered the first name of an inventor as Yashiyuki rather than Yoshiyuki. Although the Office promptly corrected the name in Office records, the record fails to indicate a Corrected Filing Receipt was mailed.[4] The second Request was not filed until almost three years after the first Request. Patentees had three years within which patentees could have ensured the spelling of the name had been corrected.
For the reasons above, the Requests for Corrected Official Filing Receipt filed after allowance will result in a reduction in the patent term adjustment.

---

[2] *Patents to Issue More Quickly After Issue Fee Payment, Notice*, 1220 Off. Gaz. Pat. Office 42 (Mar. 9, 1999).

[3] *Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 56,366, 53,387 (September 18, 2000), 1239 Off. Gaz. Pat. Office 14 (October 3, 2000):

> Papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait for payment of the issue fee to begin the process of preparing the application for publication as a patent. Section 1.704(c)(10) as adopted should deter applicants from filing papers after allowance which should have a beneficial impact upon the Office's ability to publish applications as patents more quickly.... In addition, a status inquiry filed after allowance may result in a reduction of the term adjustment. Applicants are encouraged to either call the Office or use the PAIR system (http://pair.uspto.gov) to monitor the status of an application rather than submitting written status inquiries.

Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule, 69 Fed. Reg. 21704, 21709 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (May 18, 2004), states,

> [T]he PAIR system provides public access to PALM for patents and applications that have been published which can be accessed over the Internet (at http://pair.uspto.gov), and has a private side (*http://pairdirect.uspto.gov*) which may be used by an applicant to access confidential information about his or her pending application. *See id.* Thus, applicants who choose to file status letters rather than check the status of their applications via the PAIR system must accept the negative impact on patent term adjustment that will result from such a course of action.

[4] The Office notes papers mailed by the Office on September 30, 2001, December 17, 2002, July 2, 2003, January 14, 2004, July 2, 2004, and August 13, 2004, listed the inventor's name with the proper spelling.

A reduction of 120 days is proper pursuant to 37 CFR 1.704(c)(10) for the "Second Request for Corrected Official Filing Receipt" filed September 8, 2004. The amount of the reduction is the lesser of the number of days beginning on September 8, 2004, and ending on the day a reply was mailed to the Second Request, *or* four months. Since a reply to the Second Request was not mailed within 120 days, a reduction in patent term adjustment of 120 days is appropriate.

The "Third Request for Corrected Official Filing Receipt" was filed March 7, 2005. The patent issued on March 22, 2005. Therefore, a reduction of 16 days is proper pursuant to 37 CFR 1.704(c)(10) for the Third Request.

A review of the record indicates a reduction in patent term is not warranted for the filing of drawings after the mailing of the notice of allowance. The record indicates that the Office made an error in scanning the original drawings. On December 21, 2004, the drawing sheet originally filed April 23, 2001 was rescanned into the application. Under the circumstances, it is concluded that there was no failure to engage by applicants.

The total reduction in time pursuant to 37 CFR 1.704(b) and 37 CFR 1.704(c) is 218 days (31 + 19 + 63 + 120 +16).

Patentees do not disagree with the Office's prior determination of a total of 181 days of Office delay pursuant to 37 CFR 1.703(a).

The patent term adjustment cannot be less than 0. Since subtracting 249 days of patentee delay from 181 days of PTO delay would result in a negative number of days, the patent term adjustment is 0 days.

As shown above, the record has been reconsidered, and it has been determined that the period of adjustment on the patent should have been zero (0) days.

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
Attn: Office of Petitions

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

The Certificates of Correction Branch will issue 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 ZERO (0) 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

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,870,865 B1

APPLICATION NO.: 09/839,139

ISSUE DATE : March 22, 2005

INVENTOR(S) : Nagai et al.

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (58) days

Delete the phrase "by (58) days" and insert -- by (0) days--

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HOLLAND & KNIGHT, LLP
2099 PENNSYLVANIA AVE., N.W.
WASHINGTON, DC 20006

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FEB 2 2 2008

OFFICE OF PETITIONS

In re Application of :
Scott William BENNETT, et al :
Application No. 09/839,176 : ON PETITION
Filed: April 23, 2001 :
Attorney Docket No. 065830.00017 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 24, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 15, 2005 . The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the date of abandonment of this application is February 16, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received.

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

This application is being referred to Technology Center AU 2176 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the previously filed amendment dated February 15, 2006 in accordance with 37 CFR 1.114.

April Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAIER & NEUSTADT PC
1940 DUKE STREET
ALEXANDRIA, VA 22314

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OFFICE OF PETITIONS

In re Application of	:	
Hiroshi Kitada et al	:	
Application No. 09/839,221	:	DECISION GRANTING PETITION
Filed: April 23, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 202305US2X	:	

This is a decision on the petition, filed March 29, 2006, 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 March 15, 2006 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 2141 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 Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission), which includes the following language thereon: "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 in 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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MAY 24 2010

OFFICE OF PETITIONS

DR. ALEXANDER M MEYSTEL
COGNISPHERE INC.
POST OFFICE BOX 2591
WEST CHESTER PA 19380

In re Patent No. 6,941,513	:	
Issue Date: September 6, 2005	:	
Application No. 09/839,226	:	DECISION ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 10159-1U1	:	

This is a decision on the petition under 37 CFR 1.378(c), filed April 2, 2010 to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on September 7, 2009 for failure to pay the three 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.

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. Further, it is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. 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. Additionally, the address given on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address given

on the petition; however, the Office will mail all future correspondence solely to the address of record.

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

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: John B. Berryhill
4 West Front Street
Media, Pennsylvania 19063

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. 15

MARGER JOHNSON & McCOLLOM PC
1030 SW MORRISON STREET
PORTLAND, OR 97205

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JUL 2 8 2004

OFFICE OF PETITIONS

In re Application of
Brian D. Earl
Application No. 09/839,257
Filed: April 20, 2001
Attorney Docket No. 9606-041

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed June 24, 2004, 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 nonfinal Office action mailed June 19, 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 September 19, 2002. A Notice of Abandonment was mailed on February 6, 2003.

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).

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) an acceptable statement of unintentional delay have been received. Accordingly, the reply to the nonfinal Office action of June 19, 2002 is accepted as having been unintentionally delayed.

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

The application file is being forwarded to Technology Center AU 2822 for further action as the nature of the case requires.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTELLECTUAL PROPERTY LAW GROUP LLP
12 SOUTH FIRST STREET
SUITE 1205
SAN JOSE CA 95113

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OFFICE OF PETITIONS

In re Application of	:	
Anton, Jr., Francis M.	:	
Application No. 09/839,336	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 0269919 HC-002	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 14, 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 an RCE and 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 application file is being forwarded to Technology Center 2100 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) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 7

STRAUB & POKOTYLO
1 BETHANY ROAD, SUITE 83
BUILDING 6
HAZLET NJ 07730

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AUG 04 2003

OFFICE OF PETITIONS

In re Application of
YOGESHWAR et al.
Application No. 09/839,354
Filed: April 20, 2001
Attorney Docket No. FPD-2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)/(f), filed May 30, 2003, to accept an unintentionally delayed notification of the filing in a foreign country of an application directed to the invention disclosed in the subject application.

The petition is **GRANTED**.

The present nonprovisional application became the subject of an application filed in the PCT Office designating foreign countries on April 19, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Therefore, pursuant to the provisions of 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The Office has processed the request to rescind the previous nonpublication request. A Notice Regarding Rescission of Nonpublication Request and Notice of Foreign Filing setting forth the projected publication date, November 13, 2003, accompanies this decision on petition.

The application file is being forwarded to Technology Center 2600.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Notice Regarding Rescission of Nonpublication Request and Notice of Foreign Filing

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

STRAUB & POKOTYLO
1 BETHANY ROAD, SUITE 83
BUILDING 6
HAZLET NJ 07730

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OFFICE OF PETITIONS

In re Application of
YOGESHWAR et al.
Application No. 09/839,355
Filed: April 20, 2001
Attorney Docket No. FPD-3

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b)/(f), filed May 30, 2003, to accept an unintentionally delayed notification of the filing in a foreign country of an application directed to the invention disclosed in the subject application.

The petition is **GRANTED**.

The present nonprovisional application became the subject of an application filed in the PCT Office designating foreign countries on April 19, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the PCT application.

Therefore, pursuant to the provisions of 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c), petitioner failed to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The Office has processed the request to rescind the previous nonpublication request. A Notice Regarding Rescission of Nonpublication Request and Notice of Foreign Filing setting forth the projected publication date, November 6, 2003, accompanies this decision on petition.

The application file is being forwarded to Technology Center 2600.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Notice Regarding Rescission of Nonpublication Request and Notice of Foreign Filing

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. 8

Arthrocare Corporation
680 Vaqueros Avenue
Sunnyvale, CA 94085-3523

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DEC 2 4 2002

OFFICE OF PETITIONS

In re Application of
Woloszko et al.
Application No. 09/839,427
Filed: April 20, 2001
Attorney Docket No. G-1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed, November 25, 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 in reply to the Notice to File Missing Parts Notice mailed June 19, 2001, which set a reply period of two months. No extensions of time were filed. Accordingly, a Notice of Abandonment was mailed on August 26, 2002.

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

The application is being forwarded to the Office of Initial Patent Examination.

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

Latrice Bond

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

cc: AnthroCare Corporation
595 N. Pastoria Avenue
Sunnyvale, CA 94085-2936

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ARTHROCARE CORPORATION
7500 RIALTO BOULEVARD
BUILDING TWO, SUITE 100
AUSTIN TX 78735-8532

MAILED

JUN 0 9 2009

OFFICE OF PETITIONS

In re Patent No. 6,974,453	:	
Issue Date: December 13, 2005	:	
Application No. 09/839,427	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: April 20, 2001	:	
Attorney Docket No. G-01	:	

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 01, 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 Michelle R. Eason at (571) 272-4231.

Thurman Page
Petitions Examiner
Office of Petitions

I hereby certify that this correspondence is being facsimile transmitted (571-273-6500) to the U.S. Patent and Trademark Office on the date shown below:

On 04.16.2009

By Jennifer M. Luhrman
Jennifer M. Luhrman

PATENT
Attorney Docket No.: G-01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
APR 21 2009
OFFICE OF PETITIONS

In re application of: Jean Woloszko, et al.	Examiner: Lee Cohen
Application No.: 09/839,427 Filed: 4/20/2001	Group Art Unit: 3739
Patent No.: 6,974,453	Confirmation No.: 1754
For: DUAL MODE ELECTROSURGICAL CLAMPING PROBE AND RELATED METHODS	**NOTIFICATION OF CHANGE OF ENTITY STATUS TO LARGE AND CORRECTION OF ERRONEOUSLY CLAIMED SMALL ENTITY STATUS**

VIA FACSIMILE (571-273-6500)

Mail Stop M Correspondence
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants wish to notify the U.S. Patent and Trademark Office that small entity status is no longer appropriate for this patent application.

Applicants further wish to notify that the itemization and payment of deficiencies required for correction of erroneously claimed status as a small entity are submitted herewith pursuant to 37 C.F.R. § 1.28(c).

04/20/2009 DALLEN 00000039 500359 09839427
01 FC:1461 415.00 DA

Atty Docket No.: G-01

Itemization of the total deficiency payment:

Type	Date of Erroneous Payment	Current Fee Amount for Non-Small Entity	Amount Paid in Error	Deficiency Owed (Current Fee - Amt. Paid in Error)
Request for Continued Examination (RCE)	02/15/2005	$810.00	$395.00	$415.00
			Total Deficiency Owed	$415.00

Applicants herby authorize the Commissioner to charge $415.00 to Deposit Account No. 50-0359 of ArthroCare Corporation, corresponding to the Total Deficiency Owed for the itemized fees for the above-referenced patent application.

Applicants believe no further fees are due at this time, however, the Commissioner is hereby authorized to charge any additional fees or credit any over payments to Deposit Account No. 50-0359 of ArthroCare Corporation, as necessary.

Respectfully submitted
Attorney for Applicants,

Matt Scheele

Matthew Scheele
Reg. No. 59,847

Date: 4/16/09

SEND CORRESPONDENCE TO:
ARTHROCARE CORPORATION
CUSTOMER NO. 21394
512.358.5925
512.391.3901 (fax)

Spoke to customer and requested to ignore these documents. Will redirect to the appropriate division.

Spoke 4-17-09 @ 2:40
Matthew

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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KIRTON AND MCCONKIE
60 EAST SOUTH TEMPLE,
SUITE 1800
SALT LAKE CITY UT 84111

COPY MAILED

OCT 2 7 2009

OFFICE OF PETITIONS

In re Application of	:	
Jensen et al.	:	
Application No. 09/839,433	:	DECISION ON PETITION
Filed: April 20, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10209.56	:	

This is a decision on the petitions under 37 CFR 1.78(a)(3) and 1.78(a)(6), filed August 4, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 119(e) for the benefit of the applications set forth in the concurrently filed amendment and Application Data Sheet (ADS).

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

With regards to item (1), petitioner is attempting to claim priority from the instant application to nonprovisional Application No. 10/006,014, filed December 4, 2001, and provisional Application Nos. 60/740,446, filed November 29, 2005, and 60/251,416, filed December 5, 2000. However, both 35 U.S.C. 120 and 119(e) are reserved for the benefit of *prior-filed* applications. The only application listed above which is filed prior to the instant application is provisional Application No. 60/251,416.

Accordingly, before the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) can be granted, a substitute amendment[1] correcting the above matter, along with a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6), is required. No further petition fee is necessary.

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

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

Any questions concerning this matter may be directed to Joan Olszewski at (571) 272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

[1] *Note* 37 CFR 1.121

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60 EAST SOUTH TEMPLE,
SUITE 1800
SALT LAKE CITY UT 84111

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APR 26 2010

OFFICE OF PETITIONS

In re Application of	:
Jensen et al.	:
Application No. 09/839,433	: DECISION GRANTING PETITION
Filed: April 20, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 10209.56	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed April 12, 2010, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of prior-filed provisional Application No. 60/251,416, filed December 5, 2005, as set forth in the in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

> **(1)** the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed provisional application is submitted after expiration of the period specified by 37 CFR 1.78(a)(5)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(6).

The instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional application as required by 37 1.78(a)(5)(iii).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(6) in that (1) a reference to the above-noted, prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(5)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of

unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 119(e) to the above-noted, prior-filed provisional application satisfies the conditions of 37 CFR 1.78(a)(6), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

Further, the change of power of attorney and change of correspondence address has been accepted.

Any inquiries concerning this decision may be directed to Joan Olszewski at (571) 272-7751. Any other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 1611 for appropriate action on the amendment submitted April 12, 2010, including consideration by the examiner of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

/Liana Walsh/
Liana Walsh
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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/839,433	04/20/2001	1611	483	10209.56	27	1

CONFIRMATION NO. 1737

CORRECTED FILING RECEIPT

21999
KIRTON AND MCCONKIE
60 EAST SOUTH TEMPLE,
SUITE 1800
SALT LAKE CITY, UT 84111

OC000000041287864

Date Mailed: 04/26/2010

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

Applicant(s)

Claude Jarkae Jensen, Cedar Hills, UT;
Heidi Robinson, Orem, UT;

Power of Attorney: The patent practitioners associated with Customer Number 21999

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/251,416 12/05/2000

Foreign Applications

If Required, Foreign Filing License Granted: 08/13/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/839,433**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

MORINDA CITRIFOLIA ENHANCED LIP TREATMENT

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

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ALEXANDRIA, VA 22313-1450
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Paper No. 9

STRAUB & POKOTYLO
620 TINTON AVENUE
BLDG. B, 2ND FLOOR
TINTON FALLS, NJ 07724

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FEB 10 2004

OFFICE OF PETITIONS

In re Application of
Jay Yogeshwar, et al.
Application No. 09/839,439
Filed: April 20, 2001
Attorney Docket No. FPD-1

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 30, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on April 19, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of May 20, 2004 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Technology Center Art Unit 2621 for examination in due course.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

UNITED STATES PATENT AND TRADEMARK OFFICE

FEB 23 2005

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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FEB 23 2005

OFFICE OF THE DIRECTOR
TC 3600

MCHALE & SLAVIN, P.A.
2855 PGA Blvd
Palm Beach Gardens, FL 33410

In re Application of
Dean S. Keil
Application No. 09/839, 471
Filed: April 19, 2001
For: SYSTEM AND METHOD FOR DEBIT ACCOUNT TRANSACTIONS

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office, on December 21, 2004.

The petition is **GRANTED** in view of the following evidence of timely filing :

☒ Postcard receipt being dated April 2, 2004.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☐ Certificate of Mailing/Transmission signed on _____ and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

SNM/jwk: 2/8/05

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

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P.O. Box 1450
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IBM Corporation
Intellectual Property Law
Dept. 917/ Bldg. 006-1
3605 Highway 52 North
Rochester MN 55901-7829

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SEP 3 0 2005

OFFICE OF PETITIONS

In re Application of	: DECISION ON APPLICATION
Gregg et al.	: FOR PATENT TERM ADJUSTMENT
Application No. 09/839,483	:
Filed: April 20, 2001	:
Attorney Docket No. ROC920000334US1	:

This is a decision on the "Request For Reconsideration of Patent Term Adjustment Indicated in Notice of Allowance (37 C.F.R. § 1.705)" received in the Office on March 1, 2005. Applicants request that the Applicant Delay indicated in the PAIR history be corrected from thirty-three (33) to two (2) days.

The application for Patent Term Adjustment (PTA) 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 six hundred sixty-nine **(669)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 17, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 638 days. The instant application for patent term adjustment filed March 1, 2005, was timely filed[1]. Applicants

[1] PALM records indicate that the Issue Fee payment was also received on March 1, 2005.

dispute the reduction of 33 days associated with the filing of a response to the non-final Office action mailed April 21, 2004, on August 23, 2004. Applicants assert that the response was actually filed on July 23, 2004. Accordingly, the period of reduction pursuant to 1.704(b) should be 2 days, not 33 days. In support thereof, applicants include a copy of their Response to the First Office Action and the Certificate of Fax which was received in the Office on July 23, 2004.

A review of the record confirms that the response was received in the Office on July 23, 2004. The response is present in the application file with a date of receipt thereon of July 23, 2004.

Thus, it is concluded that the patent term adjustment should not have been reduced by 31 days, but by 2 days, for this delay.

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

The application is being forwarded to the Publishing Division for processing into a patent. The revised patent term adjustment indicated on the patent will include any additional patent term earned for Office failure to issue the patent within four months after the date the issue fee was paid and all outstanding requirements were satisfied.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kery A. Fries

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

Enclosure: Copy of updated PAIR screen.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 01-02

Paper No. 5

DARBY & DARBY P.C.
805 THIRD AVENUE
NEW YORK, NY 10022

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JAN 1 5 2002

OFFICE OF PETITIONS

In re Application of	:	
Pinda, Mayer, Spieczny, Schmidt,	:	
Soloff, Rose, Reilly, and Bhamre	:	DECISION REFUSING STATUS
Application No. 09/839,502	:	UNDER 37 CFR 1.47(a)
Filed: 20 April, 20012	:	
For: COFFEE MAKER	:	

This is in response to the petition under 37 CFR 1.47(a), filed on 20 April, 2001.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to respond, correcting the below-noted deficiencies. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on 20 April, 2001, with an executed oath or declaration naming Andres Pinda, Juliana Mayer, Steven Spieczny, David Soloff, Colleeen Reily, and Neal Brahame as joint inventors and executed by joint inventors Rose, Mayer, Schmidt, and Speieczny on behalf of themselves and non-signing joint inventors Pinda, Soloff, Bhamre, and Reilly.

Also, on 20 April, 2001, the present petition was filed. Petitioners assert that a copy of the application was forwarded to joint inventors Pinda, Soloff, and Bhamre, but they failed to sign and return the declaration. Petitioners also assert that no

address for joint inventor Reilly could be located.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (5).

In regards to item (1), petitioners have not shown sufficient proof that a copy of the application (specification, including claims, drawings, if any, and the declaration) were sent to the non-signing inventors.[1] Although the petition states that a copy of the application was sent to joint inventors Pinda, Soloff, and Bhamre, it is unclear whether the statement was made with first hand knowledge. Petitioners should submit a copy of the cover letter transmitting the application papers to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

Additionally, petitioners have not shown that diligent efforts were made to obtain the last known address of joint inventor Reilly. The mere statement in the petition that efforts to contact Reilly were unsuccessful does not show that diligent efforts were made. Petitioners should attempt to obtain a last known address for Reilly from her former employer, the Internet, or directory or email searches.

Upon obtaining a last known address, a copy of the application should be sent to the inventor. If the application papers are returned as undeliverable, petitioners may show diligent efforts by providing a copy of an envelope showing that the application papers sent to the last known address of the non-signing inventor were returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set

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[1] MPEP 409.03(d).

forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

If the application is returned as undeliverable, petitioners should submit a copy of the envelope showing that the envelope addressed to the non-signing inventor at his last known address was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor must be set forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details. Petitioner should also explain what attempts were made to obtain a forwarding address and to locate each inventor through other means. If attempts to obtain a forwarding address and to locate the inventor by other means (e.g. though e-mail or the telephone) continue to fail, then applicant will have established that the inventor cannot be reached.

If the inventor refuses in writing to sign the declaration after having been sent or given a copy, petitioners should submit a copy of the written refusal with any renewed petition. If a refusal is made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of facts.

In regards to item (2), petitioner has not submitted a proper oath or declaration in compliance with 37 CFR 1.63. Petitioners state that the address given in the petition for joint inventor Reilly is the address of her former employer. In situations where an inventor does not execute the oath or declaration, such as in an appliction filed under 37 CFR 1.47, the inventor's must recent home address must be given to enable the Office to communicate directly with the inventor. A new oath or declaration, signed by all the signing inventors,[2] is required. The declaration filed on 26 September, 2001, does not state that the person(s) making the oath or declaration acknowledge the duty to disclose to the Office all information known to the person(s) to be material to patentability as defined in 37 CFR 1.56. Rather, the declaration filed on 26 September, 2001, incorrectly acknowledges a duty to disclose all information material to examination of the application.

Additionally, it is noted that although the application transmittal sheet and the petition list joint inventor Rose as the first named inventor, the declaration states that joint inventor Pinda is the first named inventor and joint inventor

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[2] MPEP 605.03

Rose is the sixth named inventor. The order of names of joint patentees in the heading of the patent is taken from the order in which the typewritten names appear in the original oath or declaration.[3] Therefore, if petitioners desire that the order of names be other than as specified on the declaration filed with the application, a petition under 37 CFR 1.182 to change the order of inventors must be filed, accompanied by the requisite petition fee. Additionally, it is noted that the first named inventor's last name appears as "Pinda" on the declaration but as "Pineda" in other application papers. As the inventorship is determined by the executed oath or declaration, a petition under 37 CFR 1.182 to correct an inventor's name, accompanied by the requisite petition fee, must be filed if an inventor's name is not correctly spelled on the declaration. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67 must be submitted with any renewed petition.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.

D Wood

Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[3] MPEP 605.04(f).

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Paper No. 7

DARBY & DARBY P.C.
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NEW YORK, NY 10022

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AUG 1 2 2002

OFFICE OF PETITIONS

In re Application of	:
Pinda, Mayer, Spieczny, Schmidt,	:
Soloff, Rose, Reilly, and Bhamre	: DECISION ACCORDING STATUS
Application No. 09/839,502	: UNDER 37 CFR 1.47(a)
Filed: 20 April, 2001	:
Attorney Docket No. 6565/1G622-US1	:

This is in response to the renewed petition under 37 CFR 1.47(a), filed on 15 March, 2002.

The petition is GRANTED.

Petitioners provided a declaration signed by previously non-signing inventors Pinda and Bhamre. Additionally, petitioners have shown that the non-signing inventors, Colleen Reilly and David Soloff, have refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, the petitioners have established, that a copy of the above-identified application was sent to the non-signing inventors' last known address. An additional letter was sent to the non-signing inventors via Federal Express including a substitute declaration. The nonsigning inventors have failed to sign and return the declaration naming them as joint inventors along with Andres Pinda, Juliana Mayer, Steven Spieczny, David Schmidt, Sparky Wilson Rose, and Neal Bhamre.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition, not the declaration. Notice of the filing of this application will also be published in the Official Gazette.

It is noted that the declaration filed with the present petition lists a different order of inventors' names than did the declaration filed on 20 April, 2001. The order of names of joint patentees in the heading of the patent is taken from the order in which the typewritten names appear in the original oath or declaration.[1] Therefore, if petitioners desire that the order of names be other than as specified on the declaration filed with the application, a petition under 37 CFR 1.182 to change the order of inventors must be filed, accompanied by the requisite petition fee.

Additionally, as stated in the decision mailed on 15 January, 2002, it is noted that the first named inventor's last name appears as "Pinda" on the declaration filed with the original application papers but as "Pineda" in other application papers and in the declaration filed with the present renewed petition. As the inventorship is determined by the original executed oath or declaration, a petition under 37 CFR 1.182 to correct an inventor's name, accompanied by the requisite petition fee, must be filed if an inventor's name is not correctly spelled on the declaration. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67 must be submitted with any renewed petition.

The application is being forwarded to Technology Center 3600 for examination in due course.

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] MPEP 605.04(f).

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Colleen Reilly
221 Noe St., Apt. 8
San Francisco, CA 94114

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AUG 1 2 2002

OFFICE OF PETITIONS

In re Application of
Pinda et al.
Application No. 09/839,502
Filed: 20 April, 2001
For: INTERACTIVE EMPLOYMENT SYSTEM AND METHOD

Dear Ms. Reilly:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. 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 1-800-972-6382 (outside the Washington D.C. area).

D. Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

DARBY & DARBY P.C.
805 THIRD AVENUE
NEW YORK, NY 10022

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David Soloff
1035 Deharo #2
San Francisco, CA 94107

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In re Application of
Pinda et al.
Application No. 09/839,502
Filed: 20 April, 2001
For: INTERACTIVE EMPLOYMENT SYSTEM AND METHOD

Dear Mr. Soloff:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703/308-6918. 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 1-800-972-6382 (outside the Washington D.C. area).

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 12

McKenna Long & Aldridge LLP
Song K. Jung
1900 K Street, N.W.
Washington DC 20006

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OFFICE OF PETITIONS

In re Application of :
In-Kwon Jeong :
Application No. 09/839,508 :
Filed: April 20, 2001 :
Title: APPARATUS AND METHOD FOR SEQUENTIALLY POLISHING AND LOADING/UNLOADING SEMICONDUCTOR WAFERS :

DECISION ON PETITION

This is a decision on the petition filed May 6, 2004, to revive the above-identified application under 37 CFR 1.137(b).

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

The above-identified application became abandoned for failure to timely file a proper response to the restriction requirement mailed January 29, 2002. This Office action set a shortened statutory period for reply of thirty (30) days from the mailing date of the action. No extensions of time under 37 CFR § 1.136(a) were obtained. Accordingly, the above-identified application became abandoned at midnight on February 28, 2002. A courtesy Notice of Abandonment was mailed on September 27, 2002.

With the instant petition, petitioner filed a response to the non-final Office action in the form of an election, and met all other requirements for a grantable petition under 37 CFR 1.137(b).

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). Providing an inappropriate statement in a petition under 37 CFR 1.137(b) to revive an abandoned application may have an adverse effect when attempting to enforce any patent resulting from the application. See Lumenyte Int 'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996)(unpublished)(patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

Both the change of correspondence address and revocation of and new power of attorney submitted on petition are acknowledged and made of record.

The application file is being forwarded to Technology Center AU 3723 for consideration of the response to the restriction requirement (Paper No. 11).

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

Nancy Johnson

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
STRUHSAKER, Paul F. et al.	:	
Application No. 09/839,509	:	DECISION ON PETITION
Filed: April 20, 2001	:	TO WITHDRAW
Attorney Docket No. **WEST14-00018**	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 11, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by John T. Mockler on behalf of all attorneys of record who are associated with customer No. 23990. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence address of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor.

There is an outstanding Office action mailed December 16, 2008 that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **PAUL F. STRUHSAKER**
5304 BROUETTE COURT
PLANO, TEXAS 75023

cc: **MR. MICHAEL S. HYNEK**
17519 MUIRFIELD DRIVE
DALLAS, TEXAS 75287

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In re Patent No. 6,925,516	:	
Issue Date: August 2, 2005	:	ON PETITION
Application No.: 09/839,513	:	
Filed: April 20, 2001	:	
Attorney Docket No.: WEST14-00033	:	

This is a decision on the petition, filed April 26, 2010, under 37 CFR 1.378(c) to accept the unintentionally delayed payment of 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The patent issued August 2, 2005. The grace period for paying the 3.5 year maintenance fee expired at midnight August 2, 2009. Therefore, since the petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

If petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which **may** be mailed concerning this patent, a Fee Address should be submitted to Maintenance Fee Division

Accordingly, the maintenance fee in this case of $490.00 will be accepted along with the surcharge of $1640.00. The above-identified patent is hereby reinstated as of the mail date of this decision.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Matthew T. Byrne
Byrne Poh LLP
11 Broadway
Suite 865
New York, NY 10004

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ROBINS & PASTERNAK LLP
1731 EMBARCADERO ROAD
SUITE 230
PALO ALTO, CA 94303

Mail Date: 04/21/2010

Applicant	: Peter Colosi	: DECISION ON REQUEST FOR
Patent Number	: 7125705	: RECALCULATION of PATENT
Issue Date	: 10/24/2006	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/839,583	: OF WYETH
Filed	: 04/20/2001	:
		:

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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JJGJR.: 04-06

Paper No: __

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CORPORATION
LAW DEPARTMENT
4850 NORTH CHURCH LANE
SUITE D
SMYRNA GA 30080

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OFFICE OF PETITIONS

In re Application of	:	
Culpepper, et al.	:	
Application No. 09/839,616	:	DECISION
Filing Date: 20 April, 2001	:	
Attorney Docket No.: D-3032	:	

This is a decision on the petition filed on 26 May, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

NOTES: **Petitioner does not appear to be Counsel of Record or otherwise empowered to prosecute the instant application. In this connection, Petitioner must file of record the appropriate revocation/power of attorney.**

Moreover, the correspondence address of record are different than that shown on the papers submitted herein. However, Petitioner has submitted no formal change(s) in this regard.

If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address (for correspondence) and Fee Address 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.

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(b)[1] (as to unintentional delay) must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

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

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **DISMISSED**.

Petitioner was not of record at the time the instant application went abandoned, and, thus, is unable to make a statement as to unintentional delay.

To this end, former Counsel, the Applicant, or the Assignee (or representative thereof) are individuals who may be competent to attest in this matter.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the final Office action mailed on 19 April, 2002 (the full paper file is not available at this writing and the Image File Wrapper (IFW), does not contain all of the substantive papers in this regard, and so the PALM record is relied upon for this history), with reply due absent extension of time on or before 19 July, 2002;

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[1] 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.)

- the instant application went abandoned after midnight 19 July, 2002;
- the Office mailed a Notice of Abandonment on 10 December, 2002;
- Petitioner filed the instant application (with fee), a reply in the form of a request for continued examination (RCE) and fee and an amendment as the submission under 37 C.F.R. §1.114, and made the statement of unintentional delay–however, in light of:

  –the period of forty-six (46) months from the date of abandonment and forty-one (41) months from Notice thereof before filing of the instant petition;

  –the allegation that the attorney responsible is no longer available;

  –the listing, at the time of abandonment, of at least six (6) registered practitioners authorized to act in the matter; and

  –the instant Petitioner was not of record at the time of abandonment;

  the Office will require additional information, statements, records, and evidence–explanation and examples of which Petitioner is directed to the Commentary at MPEP §711.03(c) for guidance.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. 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

---

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

As to the Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Because Petitioner appears not to have been of record at the time the instant application went abandoned, Petitioner is not able to aver the unintentional nature of the abandonment.

To this end, Petitioner must provide a statement by an attorney of record at the time the application went abandoned as to the unintentional nature of that event–and there will be a requirement as to docketing and other records such as might support the averments.

Therefore, it appears that Petitioner has not satisfied the "statement and showing" requirements under the regulation.

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[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:[8]

By mail: Commissioner for Patents[9]
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 concerning this decision may be directed to the undersigned at (571) 272-3214.

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

cc:
CYNTHIA R. PARKS
PARKS KNOWLTON LLC
1117 PERIMETER CENTER WEST/STE. W307
ATLANTA, GA 30338

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[8] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number no longer are routed to the new number. The number (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.)

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 068-07

Paper No: __

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AUG 27 2007

OFFICE OF PETITIONS

MEADWESTVACO
CORPORATION
LAW DEPARTMENT
4850 NORTH CHURCH LANE
SUITE D
SMYRNA GA 30080

In re Application of	:	
Culpepper, et al.	:	
Application No. 09/839,616	:	DECISION
Filing Date: 20 April, 2001	:	
Attorney Docket No.: D-3032	:	

This is a decision on the petition filed on 25 August, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

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[1] **NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.**

- Petitioner failed to reply timely and properly to the final Office action mailed on 19 April, 2002 (the full paper file is not available at this writing and the Image File Wrapper (IFW), does not contain all of the substantive papers in this regard, and so the PALM record is relied upon for this history), with reply due absent extension of time on or before 19 July, 2002;

- the instant application went abandoned after midnight 19 July, 2002;

- the Office mailed a Notice of Abandonment on 10 December, 2002;

- Petitioner filed the original petition (with fee), a reply in the form of a request for continued examination (RCE) and fee and an amendment as the submission under 37 C.F.R. §1.114, and made the statement of unintentional delay–however, in light of:

  > the period of abandonment; the allegation that the attorney responsible was no longer available; the listing, at the time of abandonment, of registered practitioners authorized to act in the matter; <u>and</u> that the original Petitioner was not of record at the time of abandonment;

  the Office required additional information–explanation and examples of which Petitioner was directed to the Commentary at MPEP §711.03(c) for guidance–and the petition was dismissed on 27 June, 2006;

- the instant petition with a statement by the assistant general counsel/senior intellectual property counsel of the assignee, who also was one of the counsels of records at the time the application went abandoned, detailing the history addressed the "statement/showing" requirements under the regulation–and, as noted below, the Office looks to the statement by and duty of candor of Thomas Boshinski (Reg. No. 30,611) to the Office in making a determination herein.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

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[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

As to the Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

It appears that Petitioner has satisfied the requirements under the regulation.

CONCLUSION

The record (including the petitions filed on 26 May and 25 August, 2006) does not necessitate a

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[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

finding that the delay between midnight 19 July, 2002 (the date of abandonment), and 25 August, 2006 (the date of the filing of a grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/Counsel Thomas Boshinski (Reg. No. 30,611) when accepting Petitioner's representation that the delay in filing the response was unintentional.[8]

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Technology Center 3600 for further processing 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[9]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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[8] 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).

[9] 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
WASHINGTON, D.C. 20231
www.uspto.gov
dw 02-02

Paper No. 6

THE MEAD CORPORATION
LEGAL DEPARTMENT
4850D NORTH CHURCH LANE
SMURNA, GA 30080

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OFFICE OF PETITIONS

In re Application of
Culpepper et al.
Application No. 09/839,616
Filed: April 20, 2001
Attorney Docket No. M297. D-3032-1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on January 2, 2002 (Certificate of Mailing date November 21, 2001), to revive the above-identified application.

The petition is **DISMISSED as moot.**

The application was filed on April 20, 2001. On June 15, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers ("6/15/01 Notice"), stating that substitute drawings in compliance with the margins requirements of 37 CFR 1.84 must be timely submitted to avoid abandonment of this application.[1] An extendable 2-month period was provided for submitting the corrected drawings.[2]

The instant petition encloses a set of corrected drawings in reply to the 6/15/01 Notice. However, this petition was filed prior to the end of the maximum extendable period for responding to the 6/15/01 Notice, i.e., January 15, 2002.[3] Moreover, the transmittal form filed

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[1] MPEP section 507 (Aug. 2001) (To implement 18-month pre-grant publication of patent applications, the PTO has revised its drawing review process such that drawings in new utility/plant applications filed on or after 11/29/00, which is the case here, are initially reviewed by the OIPE to see if they can be effectively scanned and adequately reproduced. If the drawings are not acceptable, OIPE will object to the drawings, and notify the applicant to timely submit acceptable drawings to ensure timely publication of the application . . . [C]orrected drawings must be [timely] filed . . . to avoid abandonment of the application.).

Also, 37 CFR 1.85(a) (A utility/plant application will not be placed on the files for examination until objections to the drawings have been corrected); and MPEP section 608.02(a) (Aug. 2001) (OIPE will not release applications to the Technology Centers [for examination] until acceptable drawings are filed . . . If a drawing is not timely received [by the PTO] in reply to a notice . . . , the application becomes abandoned for failure to reply.).

[2] The 2-month period for responding to a Notice to File Corrected Application Papers, similar to that in a Notice to File Missing Parts, is not identified on the Notice as a statutory period subject to 35 U.S.C. 133. Thus, extensions under 37 CFR 1.136(a) of up to 5 months are permitted. See MPEP 710.02(d) (Aug. 2001). **In the instant case, the maximum extendable reply period would end on 1/15/02 if the maximum 5-month extension of time is obtained.**

[3] See note 2, *supra*.

with the application on April 20, 2001, as well as the instant petition, contains a general authorization for the PTO to charge any required fees, which would include fees for extension of time under 37 CFR 1.136(a) to respond to the 6/15/01 Notice. Therefore, the general authorization is hereby treated as a **constructive petition** for a 4-month extension of time to file the corrected drawings in response to the 6/15/01 Notice.[4] Given that corrected drawings were filed with the instant petition prior to the expiration of the maximum extendable reply period, i.e., January 15, 2002, and that the constructive petition contained in the application transmittal and in the instant petition each provides for the requisite extension of time for timely submission of these corrected drawings, the application was not abandoned. The petition is thus dismissed as moot.

The $1,280 petition fee has been credited to Deposit Account No. 13-2512 as authorized in the instant petition. The $1,440 fee required for a 4-month extension of time has been charged to the same deposit account as authorized in the application transmittal and in the instant petition.

This application is being returned to OIPE for further processing.

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

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[4] See 37 CFR 1.136(a)(3) and MPEP section 710.02(e) (Aug. 2001) (An authorization to charge **all required fees**, fees under §1.17 . . . will be treated as a **constructive petition** for an extension of time in any **concurrent or future** reply requiring a petition for an extension of time . . . for its timely submission.).

Only 4 months are required since the drawings were accompanied by a Certificate of Mailing dated 11/21/01; see 37 CFR 1.8(a)(1).

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

MEADWESTVACO
CORPORATION
LAW DEPARTMENT
4850 NORTH CHURCH LANE
SUITE D
SMYRNA GA 30080

In re Application of	:	
Culpepper, et al.	:	
Application No. 09/839,616	:	DECISION
Filing Date: 20 April, 2001	:	
Attorney Docket No.: D-3032	:	

This is a decision on the petition filed on 25 August, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.[1]

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

---

[1] NOTE: Monitoring of the status of applications on PAIR can inform one's management of application responses and provide an indication when mailings of Office actions should be expected. Status Inquiries filed at three (3) or four (4) month intervals provide a demonstration of diligence and attention in supporting a petition seeking relief under 37 C.F.R. §1.181.

- Petitioner failed to reply timely and properly to the final Office action mailed on 19 April, 2002 (the full paper file is not available at this writing and the Image File Wrapper (IFW), does not contain all of the substantive papers in this regard, and so the PALM record is relied upon for this history), with reply due absent extension of time on or before 19 July, 2002;

- the instant application went abandoned after midnight 19 July, 2002;

- the Office mailed a Notice of Abandonment on 10 December, 2002;

- Petitioner filed the original petition (with fee), a reply in the form of a request for continued examination (RCE) and fee and an amendment as the submission under 37 C.F.R. §1.114, and made the statement of unintentional delay–however, in light of:

  > the period of abandonment; the allegation that the attorney responsible was no longer available; the listing, at the time of abandonment, of registered practitioners authorized to act in the matter; <u>and</u> that the original Petitioner was not of record at the time of abandonment;

  the Office required additional information–explanation and examples of which Petitioner was directed to the Commentary at MPEP §711.03(c) for guidance–and the petition was dismissed on 27 June, 2006;

- the instant petition with a statement by the assistant general counsel/senior intellectual property counsel of the assignee, who also was one of the counsels of records at the time the application went abandoned, detailing the history addressed the "statement/showing" requirements under the regulation–and, as noted below, the Office looks to the statement by and duty of candor of Thomas Boshinski (Reg. No. 30,611) to the Office in making a determination herein.

<u>STATUTES, REGULATIONS AND ANALYSIS</u>

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

---

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

As to the Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

It appears that Petitioner has satisfied the requirements under the regulation.

CONCLUSION

The record (including the petitions filed on 26 May and 25 August, 2006) does not necessitate a

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[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

finding that the delay between midnight 19 July, 2002 (the date of abandonment), and 25 August, 2006 (the date of the filing of a grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Petitioner/Counsel Thomas Boshinski (Reg. No. 30,611) when accepting Petitioner's representation that the delay in filing the response was unintentional.[8]

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant application is released to Technology Center 3600 for further processing 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[9]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

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

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[8] 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).

[9] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No: __

MEADWESTVACO
CORPORATION
LAW DEPARTMENT
4850 NORTH CHURCH LANE
SUITE D
SMYRNA GA 30080

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JUN 27 2006
OFFICE OF PETITIONS

In re Application of	:	
Culpepper, et al.	:	
Application No. 09/839,616	:	DECISION
Filing Date: 20 April, 2001	:	
Attorney Docket No.: D-3032	:	

This is a decision on the petition filed on 26 May, 2006, alleging unintentional delay under 37 C.F.R. §1.137(b).

NOTES: **Petitioner does not appear to be Counsel of Record or otherwise empowered to prosecute the instant application. In this connection, Petitioner must file of record the appropriate revocation/power of attorney.**

Moreover, the correspondence address of record are different than that shown on the papers submitted herein. However, Petitioner has submitted no formal change(s) in this regard.

If Petitioner desires to receive future correspondence regarding this application, the appropriate Notice of Change of Address (for correspondence) and Fee Address 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.

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(b)[1] (as to unintentional delay) must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(b)."

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

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **DISMISSED**.

Petitioner was not of record at the time the instant application went abandoned, and, thus, is unable to make a statement as to unintentional delay.

To this end, former Counsel, the Applicant, or the Assignee (or representative thereof) are individuals who may be competent to attest in this matter.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the final Office action mailed on 19 April, 2002 (the full paper file is not available at this writing and the Image File Wrapper (IFW), does not contain all of the substantive papers in this regard, and so the PALM record is relied upon for this history), with reply due absent extension of time on or before 19 July, 2002;

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[1] 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.)

- the instant application went abandoned after midnight 19 July, 2002;
- the Office mailed a Notice of Abandonment on 10 December, 2002;
- Petitioner filed the instant application (with fee), a reply in the form of a request for continued examination (RCE) and fee and an amendment as the submission under 37 C.F.R. §1.114, and made the statement of unintentional delay–however, in light of:

  –the period of forty-six (46) months from the date of abandonment and forty-one (41) months from Notice thereof before filing of the instant petition;

  –the allegation that the attorney responsible is no longer available;

  –the listing, at the time of abandonment, of at least six (6) registered practitioners authorized to act in the matter; and

  –the instant Petitioner was not of record at the time of abandonment;

the Office will require additional information, statements, records, and evidence–explanation and examples of which Petitioner is directed to the Commentary at MPEP §711.03(c) for guidance.

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. 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

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[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

As to the Allegations
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Because Petitioner appears not to have been of record at the time the instant application went abandoned, Petitioner is not able to aver the unintentional nature of the abandonment.

To this end, Petitioner must provide a statement by an attorney of record at the time the application went abandoned as to the unintentional nature of that event–and there will be a requirement as to docketing and other records such as might support the averments.

Therefore, it appears that Petitioner has not satisfied the "statement and showing" requirements under the regulation.

---

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:[8]

By mail: Commissioner for Patents[9]
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 concerning this decision may be directed to the undersigned at (571) 272-3214.

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

cc:
CYNTHIA R. PARKS
PARKS KNOWLTON LLC
1117 PERIMETER CENTER WEST/STE. W307
ATLANTA, GA 30338

---

[8] On July 15, 2005, the Central Facsimile (FAX) Number changed to (571) 273-8300. Faxes sent to the old number no longer are routed to the new number. The number (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.)

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

Gary J. Edwards
Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, California 95110

SEP 27 2002

In re Application of	)	
Mohammad H.S. Amin		
Application No. 09/839,637	)	DECISION ON REQUEST TO
Filed: April 20, 2001	)	WITHDRAW FROM RECORD
Docket No. M-8915 US	)	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed August 5, 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 Gary J. Edwards on the behalf of all attorneys of record.

The request is APPROVED.

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, Optical and Electrical
Systems and Components

cc: Gary S. Williams
Pennie & Edmonds LLP
3300 Hillview Avenue
Palo Alto, California 94304

UNITED STATES 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. 17

Schnader Harrison Segal & Lewis, LLP
1600 Market Street
Suite 3600
Philadelphia, PA 19103

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APR 0 6 2004
OFFICE OF PETITIONS

In re Application of	:	
Gad Keren et al.	:	
Application No. 09/839,643	:	ON PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 1291-01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 1, 2003, 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 in reply to the final Office action mailed January 16, 2003, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on April 17, 2003.

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 AU 3751 for processing the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

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

cc: Albert T. Keyack
1005 Glen Devon Drive
Ambler, PA 19002

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

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APR 11 2006
OFFICE OF PETITIONS

In re Application of	:
Tooru Matsumura et al	:
Application No. 09/839,694	: DECISION GRANTING PETITION
Filed: April 19, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 16869S-026400US	:

This is a decision on the petition, filed April 10, 2006, 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 March 14, 2006 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 2621 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 Part B – Fee(s) Transmittal Form (along with any balance due at the time of submission), which includes the following language thereon: "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 in 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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Alexandria, VA 22313-1450
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JUL 06 2010

OFFICE OF PETITIONS

DOCKET CLERK
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In re Patent No. 6,947,477	:	
Issue Date: September 20, 2005	:	ON PETITION
Application No.: 09/839,719	:	
Filed: August 20, 2001	:	
Attorney Docket No.: WEST14-00016	:	

This is a decision on the petition, filed April 26, 2010, 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 patent issued September 20, 2005. The grace period for paying the 3.5 year maintenance fee expired at midnight September 21, 2009. Therefore, since the petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the maintenance fee in this case of $490.00 along with the surcharge of $1640.00 will be charged to deposit account 50-4207 and are accepted . The above-identified patent is hereby reinstated as of the mail date of this decision.

If petitioner desires to receive future correspondence regarding any Maintenance Fee Reminder which **may** be mailed concerning this patent, a Fee Address should be submitted to Maintenance Fee Division.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Matthew T. Byrne
Byrne Poh LLP
11 Broadway
Suite 865
New York, NY 10004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

William A. Munck, Esq.
NOVAKOV DAVIS & MUNCK, P.C.
900 Three Galleria Tower
13155 Noel Road
Dallas TX 75240

MAIL

MAR 0 9 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Paul F. Struhsaker
Application No. 09/839,727
Filed: April 20, 2001
For: **APPARATUS FOR REALLOCATING COMMUNICATION RESOURCES TO ESTABLISH A PRIORITY CALL IN A FIXED WIRELESS ACCESS COMMUNICATION SYSTEM**

SUA SPONTE DECISION TO WITHDRAW FROM ISSUE

This is a Sua Sponte decision to withdraw the above-identified application from issue pursuant to the provisions of 37 CFR 1.313(a).

A review of the application file reveals that a Notice of Allowance and a Notice of Allowability were mailed for the above-identified application on December 2, 2004. However, the review also reveals a crossing in the mail with respect to an Applicant request for continued examination (i.e., RCE), filed November 26, 2004.

MPEP § 1.313 Withdrawal from issue, states in part:

> (a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(h) and a showing of good and sufficient reasons why withdrawal of the application from issue is necessary. A petition under this section is not required if a request for continued examination under § 1.114 is filed prior to payment of the issue fee. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application. [emphasis added]

Accordingly, given that the request for continued examination (RCE) was filed prior to the Notice of Allowance and Issue fee Due communication and prior to the payment of the Issue fee, the application file is WITHDRAWN FROM ISSUE.

The application will be forwarded to Technology Center's technical support staff for processing Applicant's request for continued examination (RCE). From there, the application will be forwarded to the examiner for further action as appropriate.

Reinhard Eisenzopf, Director (Acting)
Technology Center 2600
Communications

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P.O. Box 1450
Alexandria, VA 22313-1450
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WILLIAM A. MUNCK, ESQ.
NOVAKOV DAVIS & MUNCK, P.C.
900 THREE GALLERIA TOWER
13155 NOEL ROAD
DALLAS TX 75240

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MAY 20 2009

OFFICE OF PETITIONS

In re Application of	:	
Paul F. Struhsaker et al.	:	DECISION ON PETITION
Application No. 09/839,729	:	TO WITHDRAW
Filed: April 20, 2001	:	FROM RECORD
Attorney Docket No. WEST14-00015	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed December 11, 2008.

The request is **NOT APPROVED**.

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

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

Mr. Michael S. Hynek is not the first listed inventor in the above-identified application. As such, all future communications from the Office will continue to be directed to the above-listed address under otherwise properly notified. A courtesy copy of this decision is being mailed to the address given on the petition.

Currently, a Notice of Allowance and Fee(s) due was mailed on January 27, 2009 with a required response due by April 27, 2009. Accordingly, the above-identified application was abandoned on April 28, 2009.

Telephone inquires concerning this decision should be directed to Joan Olszewski at 571-272-7751.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: John T. Mockler
600 Banner Place Tower,
12770 Coit Road
Dallas Texas 75251

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5-14-09 Paper No.: _____

TO SPE OF : ART UNIT ~~2616~~ 2665

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/839721 Patent No.: 7035241

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

FOR IFW FILES: Should cofc be approved

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9C62-D
Palm Location 7580

Ennis Young
Certificates of Correction Branch
703-756-1542

Thank You For Your Assistance

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

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

Comments: _____

SPE 2419 Art Unit

DUPLICATE

DOCKET NO.: WEST14-00030 PATENT

Customer No.: 23990

OIPE IAP74 JAN 22 2007 PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No.	:	7,035,241 B2
Inventor(s)	:	Paul F. Struhsaker
Issued	:	April 25, 2006
Title	:	METHOD FOR ESTABLISHING A PRIORITY CALL IN A FIXED WIRELESS ACCESS COMMUNICATION SYSTEM

Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR CERTIFICATE OF CORRECTION

Certain clerical or typographical errors were noted in the above-identified patent as indicated on the attached Certificate of Correction.

Applicant respectfully requests that a Certificate of Correction be issued pursuant to 37 C.F.R. §1.322. The Commissioner is hereby authorized to charge any fees associated with this communication or credit any overpayment to Deposit Account Number 50-0208.

JAN 25 2007

ATTORNEY DOCKET NO.: WEST14-00030
PATENT NO.: 7,035,241 B2

Respectfully submitted,

MUNCK BUTRUS, P.C.

Date: Jan. 12, 2007

William A. Munck
Registration No. 39,308

P.O. Drawer 800889
Dallas, Texas 75380
Telephone: (972) 628-3600
Facsimile: (972) 628-3616
E-mail: *wmunck@munckbutrus.com*

JAN 2 5 2007

PTO/SB/44 (04-04)
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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,035,241 B2

DATED : April 25, 2006

INVENTOR(S) : Paul F. Struhsaker

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

Column 8, line 13, delete "." after the term "operable" and replace with -- ; --;

Column 8, line 14, delete "Figure 2 illustrates an exemplary data frame, as defined by the fixed wireless access network in Figure 1, according to an embodiment of the present invention" and replace with -- Figure 2 illustrates exemplary portions of a communication system to illustrate the operation of an embodiment of the present invention --;

Column 8, line 19, delete "." after the term "FIG. 1" and replace with -- ; and --.

MAILING ADDRESS OF SENDER:
Docket Clerk
P.O. Drawer 800889
Dallas, Texas 75380

PATENT NO. 7,035,241 B2

No. of additional copies

1

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.**

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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,035,241 B2

DATED : April 25, 2006

INVENTOR(S) : Paul F. Struhsaker

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

In the Drawings, please replace FIG. 3 and FIG. 4 with the following drawings:

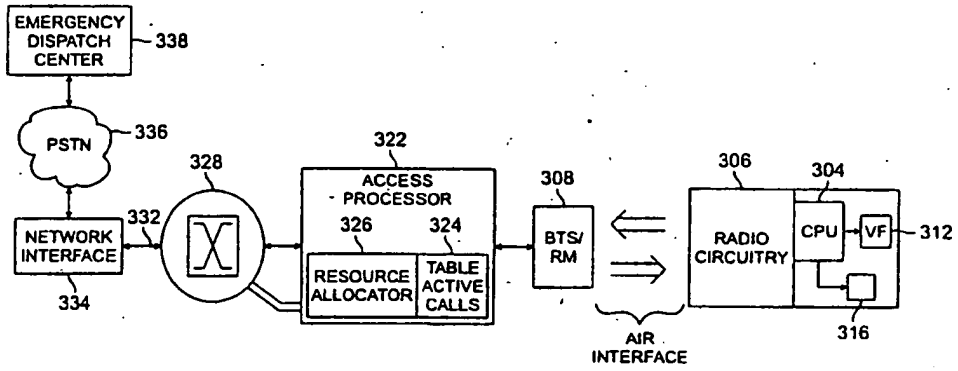

FIG. 3

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PATENT NO. 7,035,241 B2

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,035,241 B2

DATED : April 25, 2006

INVENTOR(S) : Paul F. Struhsaker

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

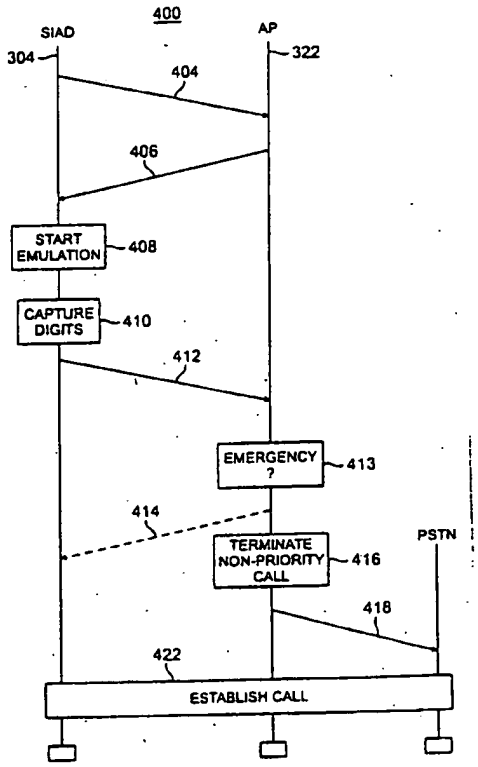

FIG. 4

MAILING ADDRESS OF SENDER:
Docket Clerk
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Dallas, Texas 75380

PATENT NO. 7,035,241 B2

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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 25 2007

response indicating whether communication resources are available in the communication system to establish the call of indeterminate priority is returned to the subscriber station.

A response detector at the subscriber station is coupled to receive indications of the response to the call establishment message. Indication of whether communication resources are available to establish the call is detected thereat. If communication resources are unavailable, a call set-up emulator is operable to emulate at the subscriber station normal call set-up operations. To the user of the subscriber station at which the call is initiated, call set-up operations appear to be normally progressing.

Dialing digits associated with the terminating station with which the call is to be established are entered at the subscriber station. A dialing digit signal is then sent to the network infrastructure. Determination is made at the network infrastructure of the priority to be associated with the call which is to be established. If the call is a priority call, such as a call to an emergency dispatch center, e.g., indicated by a pseudo-universal dialing code, such as 9-1-1, resource reallocations are effectuated to permit the establishment of the call. Thereafter, the call is established.

In one implementation, apparatus is provided for a subscriber station operable in the FWA system. A call set-up emulator is selectably operable to emulate normal call set-up operations at the subscriber station even when communication resources are not initially available to establish a call by the subscriber station. A dial-tone generator generates a dial tone audibly detectable by the user of the subscriber station in which the call is originated. Dialing digits associated with the call originated at the subscriber station are also enterable in apparent normal fashion at the subscriber station. Upon subsequent reallocation of communication resources in the FWA communication system, the call establishment commences in normal manner.

In a further implementation, apparatus is provided for the network infrastructure of the FWA system, such as at an access processor or base transceiver station of the system. A detector is coupled to detect a call establishment message transmitted to the network infrastructure. Responsive to receipt of the call establishment message, determinations are made of the availability of communication resources to establish a call in the communication system. A response is then sent to the originating subscriber station. Thereafter, indications of the identity of the terminating station to which a call is to be established are received at the network infrastructure. If the identify of the terminating station indicates that the call is a priority call, reallocation of communication resources is made, if necessary, to permit the establishment of the call. If communication resources are not otherwise available, an ongoing communication session is terminated to provide the communication resources to effectuate the call.

In these and another aspects, therefore, a method is provided for a multi-user FWA (fixed wireless access) communication system in which a plurality of subscriber stations are operable to communicate by way of radio links with network infrastructure to which a correspondent node is coupled. A call of a selected call-type is selectably originated at a selected subscriber station. A call establishment message is generated for communication to the network infrastructure to initiate call set-up procedures which precurse a request to establish the call between the selected subscriber station and the correspondent node. Detection is made as to whether a response to the call establishment message indicates that communication resources are available to establish the call. Normal call set-up operations are emulated at the selected subscriber station at least for a selected period to responsive to detection communication resource unavailability to establish the call.

The present invention will be better understood when read in light of the accompanying drawings which are described in the detailed description hereinbelow and in light of the claims appended hereto.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. **1** illustrates a functional block diagram of an exemplary fixed wireless access (FWA) network in which an embodiment of the present invention is operable.

FIG. **2** illustrates an exemplary data frame, as defined by the fixed wireless access network in FIG. **1**, according to an embodiment of the present invention;

FIG. **3** illustrates a functional block diagram of portions of the fixed wireless access communication system shown in FIG. **1**.

FIG. **4** illustrates a message sequence diagram exemplary of signaling generated during operation of the communication system shown in FIGS. **1** and **3** pursuant to an embodiment of the present invention.

DETAILED DESCRIPTION OF THE INVENTION

Referring first to FIG. **1**, a communication system, shown generally at **10**, provides for communications with the subscriber stations, of which the subscriber station **12** is exemplary. Communications are effectuated with the subscriber station by way of radio links formed upon an air interface **14**. Data originated at an appropriately-positioned subscriber station can be communicated to a correspondent node, **16** by way of a communication path by way of the radio links formed upon the air interface. Data originated at the correspondent node **16** can be communicated upon a communication path formed between a correspondent node and a subscriber station. Two-way communication between the subscriber station and the correspondent node is thereby possible.

In the exemplary implementation, the communication system **10** forms a fixed wireless access (FWA) system coupled to a network backbone, of which the combined path data network (PDN) and public-switched telephonic network (PSTN) **18** is representative in the figure.

While the following description of operation of an embodiment of the present invention shall describe its operation with respect to the exemplary implementation of the communication system shown in the figure, it should be understood that operation of an embodiment of the present invention is analogously also operable in other types of communication systems which use concentration techniques or otherwise are susceptible to access limitations.

The fixed wireless access system includes a plurality of base transceiver stations of which the base transceiver/remote modem (BTS/RM) **22** shown in the figure is exemplary. Each base transceiver station defines a cell. Here, the base transceiver station **22** defines a cell **24**. The subscriber station **12** is here positioned at a location encompassed by the cell **24**. A plurality of other subscriber stations are also positionable at locations encompassed by the cell **24**. And, other subscriber stations positioned in other cells defined by other base transceiver stations typically form parts of a fixed wireless access communication system.

Concentration techniques are used in system construction. That is to say, system construction permits a high ratio of

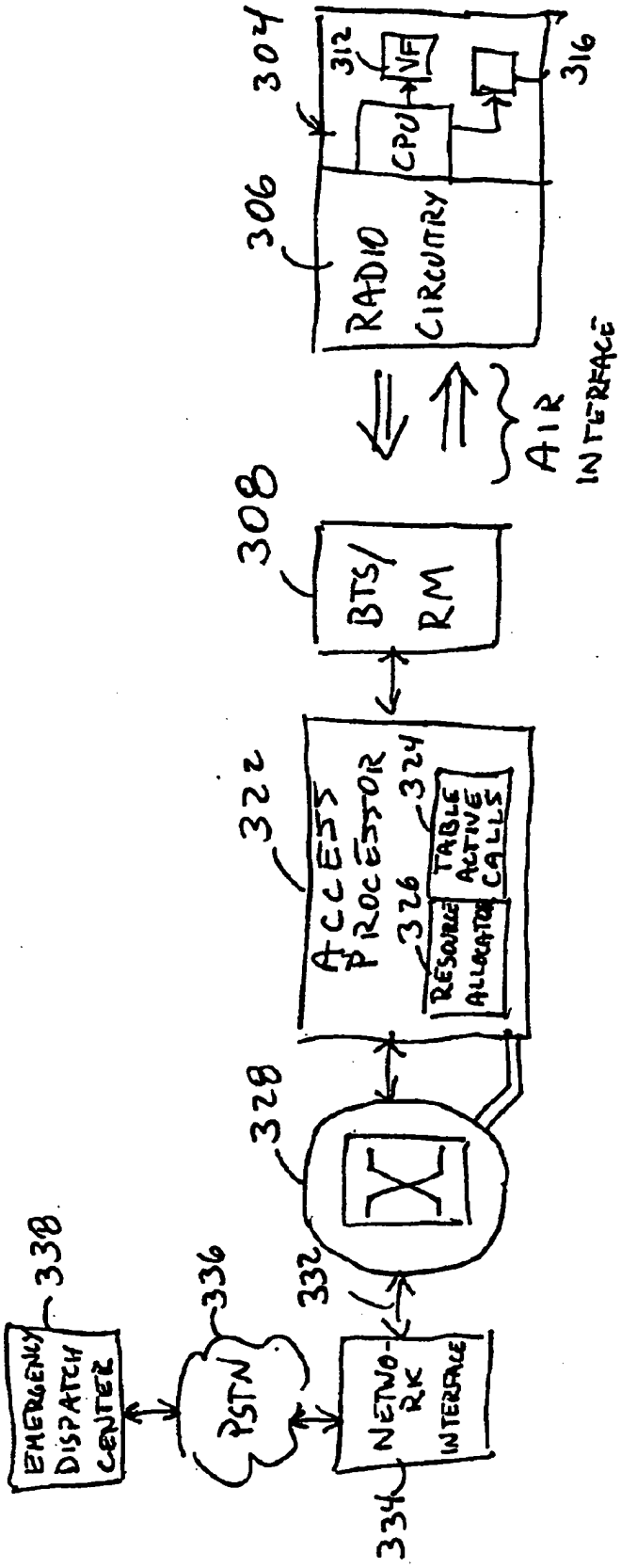
EMERGENCY DISPATCH CENTER
338
PSTN
336
NETWORK INTERFACE
334
332
328
ACCESS PROCESSOR
322
RESOURCE ALLOCATOR
326
TABLE ACTIVE CALLS
324
BTS/RM
308
AIR INTERFACE
RADIO CIRCUITRY
306
CPU
VF
312
304
316

FIG. 3

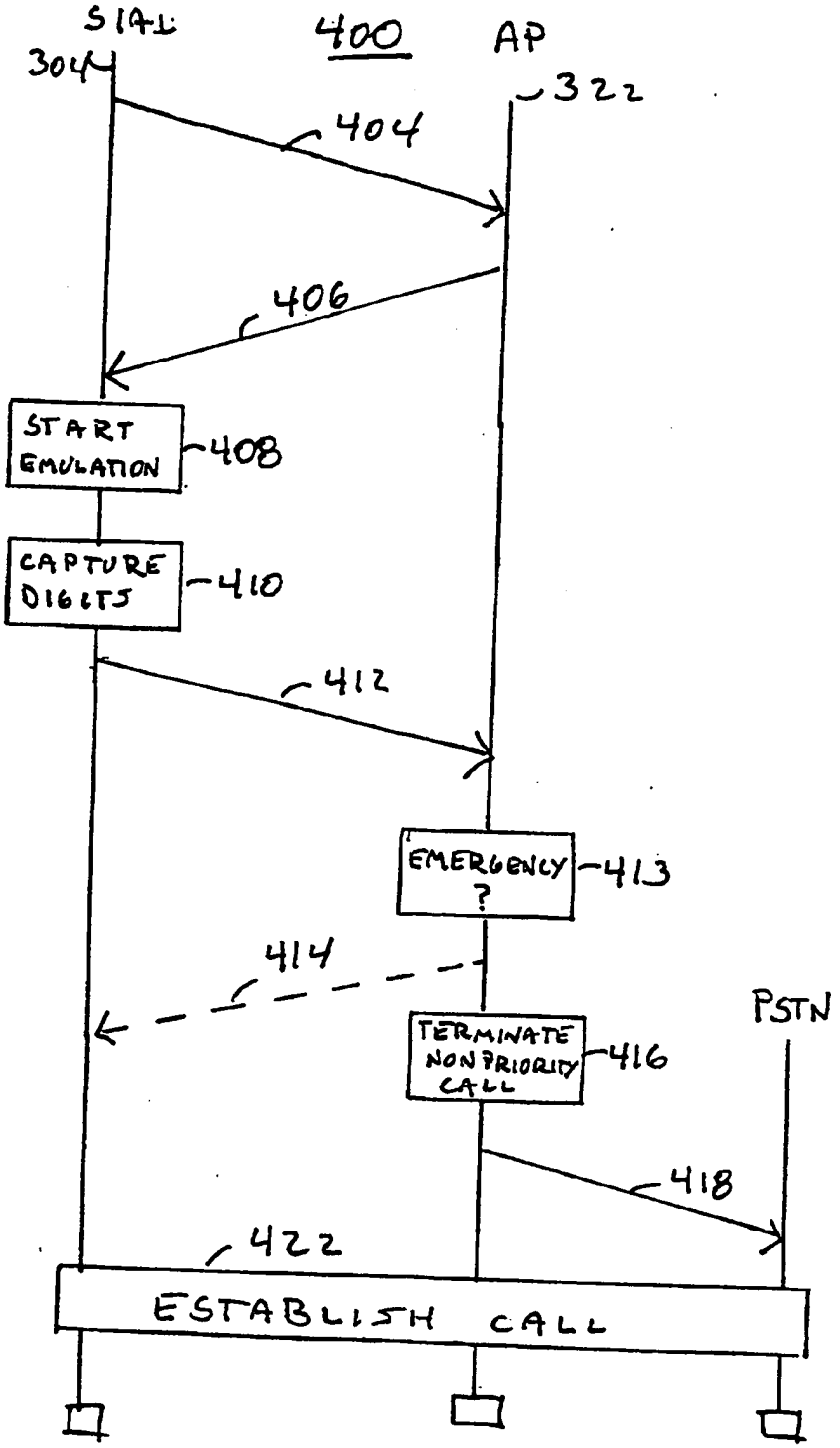
STA1
400
AP
304
322
404
406
START EMULATION
408
CAPTURE DIGITS
410
412
EMERGENCY ?
413
414
TERMINATE NON PRIORITY CALL
416
PSTN
418
422
ESTABLISH CALL

FIG. 4

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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CABOT CORPORATION
LAW DEPARTMENT
157 CONCORD ROAD
BILLERICA, MA 01821

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MAR 26 2007

OFFICE OF PETITIONS

In re Application of :
Michael A. Lucarelli et al :
Application No. 09/839,762 : ON PETITION
Filed: April 20, 2001 :
Attorney Docket No. 9613CON2 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 8, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to submit drawings on or before December 2, 2005 in reply to the Notice of Allowability, mailed September 2, 2006, which set a period for reply of three (3) months. The date of abandonment of this application is December 3, 2005. A Notice of Abandonment was mailed on June 1, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of drawings, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Notice of September 2, 2006 is accepted as being unintentionally delayed.

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MORGAN LEWIS & BOCKIUS LLP
RAMBUS INC
2 PALO ALTO SQUARE
3000 EL CAMINO REAL
PALO ALTO, CA 94306

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APR 0 7 2005

OFFICE OF PETITIONS

In re Application of	:
Haw-Jyh Liaw et al	:DECISION ON PETITION
Application No. 09/839,768	:UNDER 37 CFR 1.78(a)(3) AND
Filed: April 19, 2001	:37 CFR 1.183
Attorney Docket No. 60809-0080-us	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed January 12, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition. This also being treated under 37 CFR 1.183 requesting waiver of 37 CFR 1.78(a)(3) "as that rule operates in conjunction with 37 CFR 1.17(t)."

The petition considered under 37 CFR 1.78(a)(3) is **DISMISSED**.

The petition considered under 37 CFR 1.183 is **DISMISSED**.

WITH RESPECT TO THE PETITION UNDER 37 CFR 1.78(a)(3):

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

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

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition complies with items (1) through (3) above. However, the examiner has indicated that the proposed amendment would not be entered because the "entry of claim of priority would require a new grounds of rejection since it would remove art applied on grounds of rejection as prior art." Therefore, since the amendment does not *prima facie* place the application in condition for allowance for the reasons indicated by the examiner, petitioner must now submit a Notice of Appeal, a request for continued examination (RCE) under the provisions of 37 CFR 1.114, or file a continuing application pursuant to the provisions of 37 CFR 1.53(b).

Any request for reconsideration of this decision must be accompanied by a cover letter entitled "Renewed Petition under 37 CFR 1.78(a)(3)" and must include the appropriate reply to continue prosecution of the instant application.

WITH RESPECT TO WAIVER OF THE SURCHARGE REQUIRED BY 37 CFR 1.78(a)(3)(ii) AND 37 CFR 1.17(t).

Petitioner requests under 37 CFR 1.183 waiver of the applicable surcharge under 37 CFR 1.78(a)(3)(ii) for the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. § 120 as set forth in 37 CFR 1.17(t). In this regard, petitioner states that this is an extraordinary situation where waiver of the applicable fee is justified since "the Office failed to (i) make the correction to the Filing Receipt, and (ii) instruct the Applicant to amend the first sentence of the application to include the reference to the earlier application, as is typically the case."

APPLICABLE RULE

37 CFR 1.78(a)(2)(i), (ii) and (iii) provides:

> (2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).
>
> (ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed

application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application or sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

(A) An application for a design patent;
(B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or
(c) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2)(ii) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior-filed application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior-filed application must be accompanied by:

(i) The reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section to the prior-filed application, unless previously submitted;

(ii) The surcharge set forth in § 1.17(f); and

(iii) A statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of this section and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

37 CFR 1.183 states 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 Commissioner or the Commissioner'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).

OPINION

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

The circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. In this regard, petitioner failed to follow the rules pertaining to the proper procedure for filing an amendment to insert a claim for priority. More specifically, the proper procedure would have been to file an amendment in compliance with 37 CFR 1.121 instructing the Office to insert the claim for priority in the first sentence of the specification following the title or include the claim for priority in an Application Data Sheet (ADS) as provided by 37 CFR 1.76(b)(5), and not in a declaration. *See* 37 CFR 1.78(a)(2)(iii). Further, the claim for priority in the declaration was improper since there must be a relationship stated; i.e., whether the application is a continuation, division, or continuation-in-part. While the Office attempts to notify applicants of deficiencies in actions in a manner permitting a timely correction, the Office has no obligation to notify parties of deficiencies in their actions in a manner permitting a timely correction. *See* In re Sivertz, *supra*; *see also* In re Colombo, Inc., 33 USPQ2d 1530, 1532 (Comm'r Pat. 1994). Rather, it is ultimately the responsibility of the applicants to ensure that a proper and timely submission is submitted so as to avoid having to file a petition to effect correction of the omission or deficiency. Colombo, Id. Therefore, the failure to timely submit a proper claim for priority of the earlier application within the time period set forth in 37 CFR 1.78(a)(ii) was a circumstance entirely within petitioner's control, and could

have been avoided by the exercise of reasonable care and diligence. 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. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983).

Furthermore, since the USPTO did not cause or contribute to petitioner's filing delay, this case is even further removed from consideration as one where "justice requires" equitable relief. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000). Further, petitioner's failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. See Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995).

Petitioner overlooks that his failure to timely file a proper claim for benefit of the earlier filed application under 35 U.S.C. § 120 constituted a *waiver* of his right to claim such benefit of priority. *See* 35 U.S.C. § 120 ("the Director may consider the failure to submit such [a claim] within that time period as a waiver of any benefit under this section"); 37 CFR 1.78(a)(2)(ii); *Cong. Rec.* S14719 (Nov. 17, 1999). Fortunately for petitioner, however, he may now seek reinstatement of his unintentionally waived right, subject, however, to payment of the very surcharge of which petitioner now complains. *See* 35 U.S.C. § 120, last sentence; 37 CFR 1.78(a)(3); *Cong. Rec.*, supra. That is, since petitioner now desires to be entitled to the potential benefits of the earlier application via § 120, then petitioner must also accept the consequences attendant to that action. *See* Abbott Laboratories v. Novopharm Ltd., 38 USPQ2d 1309, 1312 (D.C. N. Il. 1996), *aff'd* 104 F.3d. 1305, 41 USPQ2d 1535 (Fed. Cir. 1997).

As authorized, the $1,370 fee required by 37 CFR 1.78(a)(3)(ii) and the $400 fee required by 37 CFR 1.183 will be charged to petitioner's Deposit Account No. 50-0310.

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

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

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

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

Any questions concerning this matter may be directed to Wan Laymon at (571) 272-3220.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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RAMBUS INC
2 PALO ALTO SQUARE
3000 EL CAMINO REAL
PALO ALTO, CA 94306

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JUL 27 2005

OFFICE OF PETITIONS

In re Application of	:
Haw-Jyh Liaw et al	:
Application No. 09/839,768	: DECISION ON PETITION
Filed: April 19, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 60809-0080-us	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed May 11, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed on January 12, 2005.

The petition is **GRANTED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the prior-filed nonprovisional applications has been included in an

amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been previously submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

After this decision is mailed, deposit account No. 50-0310 will be charged $900 for extension of time under 37 CFR 1.136(a).

Any inquiries concerning this decision may be directed to Wan Laymon (571) 272-3220. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center Art Unit 2112 for appropriate action on the amendments filed January 12, 2005, including consideration by the examiner of applicants' entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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. 9

LOOP INTELLECTUAL PROPERTY LAW
2033 SIXTH AVENUE
SUITE 1020
SEATTLE, WA 98121-2584

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SEP 1 9 2002

OFFICE OF PETITIONS

In re Application of
Mallari, et al.
Application No. 09/839,786
Filed: April, 19, 2001
Attorney Docket No. 690089.401C3

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 26, 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 Notice to File Missing Parts of Application (Notice) mailed June 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. A one (1) month extension of time was obtained. Accordingly, the above-identified application became abandoned on September 16, 2001.

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 $920.00 extension of time submitted with the petition on August 26, 2002 was subsequent to the maximum period obtainable for reply, the $920.00 extension of time will be refunded to petitioner by treasury check.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

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

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APR 2 8 2010

OFFICE OF PETITIONS

THOMAS LOOP
GRAYBEAL JACKSON LLP
400 - 108TH AVENUE NE, SUITE 700
BELLEVUE, WA 98004

In re Patent No. 6,808,840	:	
Issue Date: October 26, 2004	:	
Application No. 09/839,786	:	ON PETITION
Filed: April 19, 2001	:	
Attorney Docket No. 690089.401C3	:	

This is a decision in response to a petition filed March 1, 2010, under 37 CFR 1.378(c), to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on October 27, 2008 for failure to pay the 3 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.

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.

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the application. However in accordance with 37 CFR 1.34 (a), the signature appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party on whose behalf he/she acts. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to the person signing the petition; however, all future correspondence regarding this patent will be directed solely to the above noted correspondence address currently of record.

Petitioner will not receive future correspondence related to maintenance fees for the patent unless a "Fee Address" Indication Form (see PTO/SB/47) is submitted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6059.

Alicia Kelley
Petitions Examiner
Office of Petitions

cc: TUE NGUYEN
496 OLIVE AVE
FREMONT, CA 94539

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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MARC J FARRELL
BUCHANAN INGERSOLL PC
213 MARKET STREET 3RD FLOOR
HARRISBURG, PA 17101-2121

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JUN 24 2005

OFFICE OF PETITIONS

In re Application of :
Debabrata Mukherjee, et al. :
Application No. 09/839,793 :
Filed: April 20, 2001 :
Attorney Docket No. 00-40051-US :

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.137(b), filed April 14, 2005, 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 August 13, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on November 15, 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 Formal Drawings; (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.

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

This application matter is being forwarded to the Publishing Division for further processing.

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
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Alexandria, VA 22313-1450
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DEC 14 2004

#27

WILLIAM M. BLACKSTONE
PATENT DEPARTMENT
INTERVET, INC.
405 STATE STREET
MILLSBORO, DE 19966

In re Application of	:
Heinz-Jurgen H. J. Thiel et al	:
Serial No.: 09/839,796	: PETITION DECISION
Filed: April 9, 2001	:
Attorney Docket No.: 2000.552	:

This is in response to the petition under 37 CFR 1.181, filed December 5, 2003, requesting withdrawal of abandonment based timely payment of the Issue Fee. The delay in acting on this petition is regretted.

A review of the file history shows that the examiner mailed a Notice of Allowance and Issue Fee Due and a Notice of Allowability to applicants on June 13, 2003, setting a three month statutory period for payment of the Issue Fee. Applicants submitted the Issue Fee Transmittal Form on September 12, 2003, authorizing payment of the Issue Fee from a Deposit Account. Applicants, however, failed to insert the Deposit Account No. on the form and the Issue Fee remained unpaid. A Notice of Abandonment was mailed to applicants on November 21, 2003, indicating failure to pay the Issue Fee. Applicants then filed this petition stating the Issue Fee was timely paid and requesting revival of the application. In view of the fact that the Issue Fee could not be paid as directed, the application cannot be revived in this manner.

The petition is **DENIED**.

Applicants filed a petition under 37 CFR 1.137(b) on October 8, 2004. In view thereof the application will be forwarded to the Office of Petitions for consideration thereof.

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.

Jasemine C. Chambers
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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AKZO NOBEL PHARMA
PATENT DEPARTMENT
PO BOX 318
MILLSBORO, DE 19966

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OFFICE OF PETITIONS

In re Application of

Thiel, et al.

Application No. 09/839,796

Filed: April 19, 2001

Attorney Docket No. 2000.552 US

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), October 8, 2004, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to reply to the "Notice of Allowance and Issue Fee Due" (the "Notice") mailed June 13, 2003, which set a statutory period for reply of three (3) months from its mailing date. A proper response was not received within the allowable period, and the application became abandoned on September 13, 2003. A Notice of Abandonment was mailed on November 21, 2003.

The issue fee in the amount of $1,370.00 was received on October 8, 2004.

Deposit account 02-2334 will be charged $300.00 for the publication fee.

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

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

R. Scott Rhoades,
Strasburger & Price, LLP
901 Main Street
Suite 4300
Dallas, TX 75202-3794

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JUN 06 2002

OFFICE OF PETITIONS

In re Application of
Shridhar Krishnamurthy, et al.
Application No. 09/839,830
Filed: April 19, 2001
Attorney Docket No. 27066.0106

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(f)

This is a decision on the petition filed February 15, 2002 and supplemented on May 24, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

This application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by: (1) the reply which is met by notification of such filing in a foreign country or under a multinational treaty; (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition has been found in compliance with the 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt which sets forth the projected publication date of September 5, 2002 accompanies this decision on petition.

Telephone inquiries concerning this decision should be directed to Marianne Morgan at (703) 306-3475.

This application is being forwarded to Technology Center Art Unit 2663 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
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WASHINGTON, D.C. 20231
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GREENLEE WINNER AND SULLIVAN P C
5370 MANHATTAN CIRCLE
SUITE 201
BOULDER CO 80303

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OCT 16 2002

OFFICE OF PETITIONS

Applicant: Aebersold et al.
Appl. No.: 09/839,884
Filing Date: April 20, 2001
Title: RAPID QUANTITATIVE ANALYSIS OF PROTEINS OR PROTEIN FUNCTION IN COMPLEX MIXTURES
Attorney Docket No.: 64-98A
Pub. No.: US 2002/0076739 A1
Pub. Date: June 20, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on August 20, 2002 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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Mailed: OCT. 1 9 2001

Paper No. 4

In re Application of
Willett, Kevin R.
Serial No. 09/839,887
Filed: April 20, 2001
For: CONTIGUOUS COLLIQURFACTION FORMING A SURFACE FILM FOR A COMPOSITE STRIP

DECISION ON PETITION

This is in response to the petition filed June 08, 2001, requesting that the above-identified application be granted Special Status under Section 708.02 (VIII) of the MPEP.

DECISION

The petition has been considered and found to be deficient for the following reason: Section 708.02 VIII© requires that a pre-examination search be made; this search should cover all areas searchable by the examiner. However, our review shows that Class 428, Subclasses 143, 220, 323, 327-332, 337, 339, 457, 461, and Class 428, Subclasses 500 and 515 should be searched.

Accordingly, the petition is **DENIED**.

Richard V. Fisher

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

Brian B. Shaw
HARTER, SECREST & EMERY, LLP
700 Midtown Tower
Rochester, NY 14604

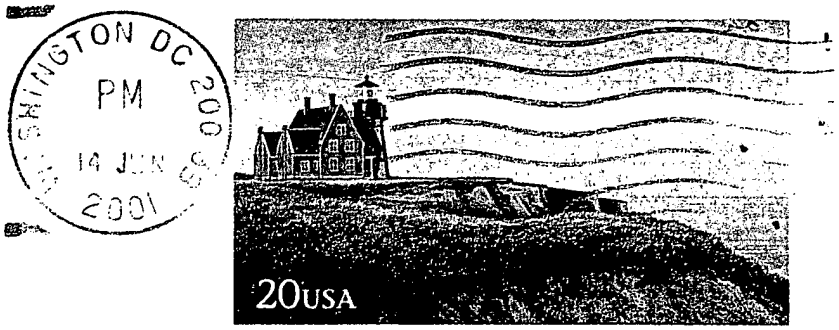
Commissioner for Patents June 8, 2001
Washington, D.C. 20231

OIPE JC11
JUN 0 8 2001
PATENT & TRADEMARK OFFICE

Applicant: Willett, Kevin R.
Serial No.: 09/839,887
Date Filed: 4/20/01
Title: CONTIGUOUS COLLIQUEFACTION FORMING A SURFACE FILM FOR A COMPOSITE STRIP

Transmittal of a Petition to Make Special including Detailed Discussion Pursuant to MPEP 708.02 VIII (E), an Information Disclosure Statement including copies of cited references and our check in the amount of $130.00 are hereby received and acknowledged.

Metzeler Automotive Profile Systems\85939.000193\BBS



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ROCHESTER, NY 14604

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Mailed: DEC -10 2001

Paper No. 6

In re Application of Kevin R. Willett Serial No. 09/839,887 Filed: April 20, 2001 For: CONTIGUOUS COLLIQUEFACTION FORMING A SURFACE FILM FOR A COMPOSITE STRIP	DECISION ON PETITION

This is in response to the renewed petition filed November 09, 2001, requesting that the above-identified application be granted Special Status under Section 708.02 (VIII) of the MPEP.

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

The petition is GRANTED.

Richard V. Fisher

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

Brian B. Shaw
HARTER SECREST & EMERY LLP
1600 Bausch & Lomb Place
Rochester, NY 14604

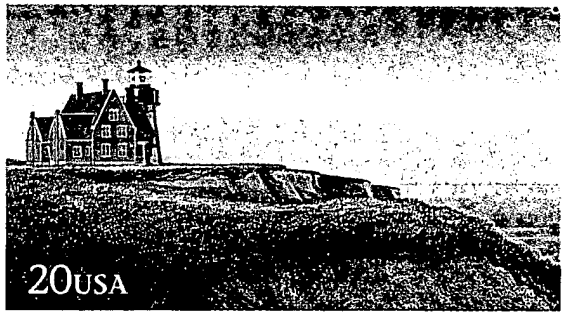
Commissioner for Patents April 20, 2001
Box Patent Application
Washington, D.C. 20231

JC885 U.S. PTO
09/839887
04/20/01

Applicant: Willett, Kevin R.
Serial No.: N/A
Date Filed: Herewith
Title: CONTIGUOUS COLLIQUEFACTION FORMING A SURFACE FILM FOR A COMPOSITE STRIP

Transmittal of a Utility Patent Application including 18 pages of specification and 6 drawing pages, a Fee Transmittal, our check in the amount of $1,246.00, and a fully executed Declaration are hereby received and acknowledged.

Metzeler Automotive Profile Systems\85939.000193\BBS



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700 MIDTOWN TOWER
ROCHESTER, NY 14604

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UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700.

JUN 29 2004

Mailed:_____

rvk

Paper Number:_____

In re application of
David Moy et al.
Serial No. 09/839,932
Filed: April 20, 2001
For: PROCESS FOR PRODUCING SINGLE WALL NANOTUBES USING UNSUPPORTED METAL CATALYSTS AND SINGLE WALL NANOTUBES PRODUCED ACCORDING TO THIS METHOD :

DECISION ON PETITION

This is a response to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT", filed January 26, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of December 09, 2003, for failure to timely file a proper response to the Office letter dated May 20, 2003 be withdrawn. The petitioner asserts that applicants timely filed a proper response and a Petition for Extension of Time to the Office letter of May 20, 2003 on November 19, 2003.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee).

A review of the petitioner's evidence provided with the instant petition indicates that the request has merit. The evidence presented is sufficient to establish that the applicants did file the proper response to the Office letter of May 20, 2003 in a timely manner. The evidence provided includes a copy of the response and Petition for Three Months Extension of Time with an executed Certificate of Mailing dated November 19, 2003 (Exhibit A and B).

Therefore, the abandonment is hereby withdrawn, and the application is returned to

pending status. The case will be forwarded to the Technical Support Staff for entering of the Response dated November 19, 2003 and then forwarded to the examiner for prompt consideration.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

KRAMER LEVIN NAFTAILS & FRANKEL, LLP
919 THIRD AVENUE
NEW YORK, NY 10022

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Paper No. 3

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

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OFFICE OF PETITIONS

In re Application of
Kosaka & Plate
Application No. 09/839,978
Filed: April 20, 2001
Attorney Docket No. 018928000110

DECISION ON PETITION

This decision is in response to the petition under 37 CFR 1.47(a) filed on April 20, 2001.

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. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

A review of the application file reveals that petitioner has submitted a copy of the executed oath or declaration filed in Application No. 09/183,797, of which the instant filing is a continuation application. However, petitioner has not submitted a copy of the decision, mailed on January 24, 2002, granting a petition to accord § 1.47 status to the prior application in accordance with 37 CFR 1.63(d)(3)(I).

Even if petitioner had submitted the grant decision from Application No. 09/183,797, the instant petition would not be granted because it was impossible for Inventor Plate to execute the declaration that he received. The declaration that was mailed to Inventor Plate's last known address only listed him as an inventor without any reference to the other joint inventor. The Declaration should set forth all of the joint inventors on the same page to ensure that each named inventor is aware of the other named inventors of the subject matter. See 37 CFR 1.63. For this reason, the oath or declaration that Inventor Plate saw was not in compliance with 37 CFR 1.63. MPEP 409.03(a).

Petitioner must send Inventor Plate a copy of the application with a declaration listing **both** of the joint inventors. When Inventor Plate does not respond to the request that he sign the declaration or expressly refuses to do so, then petitioner will be entitled to Rule 47 status in this application.

Pursuant to petitioner's authorization, deposit account No. 20-1430 will be charged the $130.00

petition fee associated with this matter.

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 should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

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Paper No. 5

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
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SAN FRANCISCO CA 94111-3834

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OFFICE OF PETITIONS

In re Application of
Kosaka, et al.
Application No. 09/839,978
Filed: April 20, 2001
Attorney Docket No. 018928000110

LETTER

This is in response to the May 22, 2002 petition under 37 CFR 1.47(a).

The petition is **DISMISSED AS MOOT**.

In accordance with 37 CFR 1.63(d), petitioner has submitted a copy of the executed oath or declaration filed in Application No. 09/183,797, of which the instant filing is a continuing application. Furthermore, a copy of the decision, mailed on January 24, 2002, granting a petition to accord § 1.47(a) status to the prior application has been placed in the file of the present application.

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

As no petition is necessary to accord Rule 1.47(a) status in this application, the petition is dismissed as moot. No petition fee is necessary and none has been charged.

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

After this decision is mailed, the application will be returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision should be directed to the undersigned at 703-306-5593.

Scott M. Ledford
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 7

William H. Dippert
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022

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OFFICE OF PETITIONS

In re Application of :
Michael R. Treat, et al. :
Application No. 09/839,988 :
Filed: April 20, 2001 :
Attorney Docket No. 01038.20539 (20076.69) :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 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 Notice to File Missing Parts of Nonprovisional Application mailed August 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 16, 2001.

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), it will be interpreted as the required statement. Petitioner must notify the Office if thisis **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 or in my absence, Sherry Brinkley at (703) 305-9220.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Retta Williams

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

Sherry Brinkley

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

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Eckert Seamans Cherin & Mellott, LLC
10 Bank Street
Suite 1061
White Plains, NY 10607

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OFFICE OF PETITIONS

In re Patent No. 6,908,463 :
Issue Date: June 21, 2005 :
Application No. 09/839,988 : LETTER
Filed: April 20, 2001 :
Attorney Docket No. 01038.20539 (20076.69) :

This is in response to the notice filed January 8, 2009, under 37 CFR 1.28(c), seeking status as a large entity.

The request is DISMISSED.

It is noted that $1190.00 was authorized using the firm's credit card. The first maintenance fee is $980.00 for large entity, which $555.00 was applied towards the fee, as well as the surcharge. The issue fee is $1,510.00 for large entity, which $635.00 was applied, however, an additional fee deficiency of $175.00 is required for the issue fee payment.

Inquiries concerning this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson Baylor

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Eckert Seamans Cherin & Mellott, LLC
10 Bank Street
Suite 1061
White Plains, NY 10607

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MAR 19 2009

OFFICE OF PETITIONS

In re Patent No. 6,908,463 :
Issue Date: June 21, 2005 :
Application No. 09/839,988 :
Filed: April 20, 2001 :
Attorney Docket No. 01038.20539 (20076.69) :

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

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Paper No. 20

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OFFICE OF PETITIONS

FOLEY & LARDNER
P.O. BOX 80278
SAN DIEGO, CA 92138-0278

In re Application of :
Ronald M. Evans :
Application No. 09/840,008 : DECISION DISMISSING PETITION
Filed: April 20, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. SALK2270-4 :

This is a decision on the petition, filed August 14, 2003, under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on April 16, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on January 4, 2002.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. *See* Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2))(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at http://www.uspto.gov/web/patents/patog/week26/.

In the instant application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country. Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, no petition fee is being charged to Counsel's deposit account as authorized.

This application is being forwarded to Technology Center AU 1632 for consideration of the amendment filed June 30, 2003.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-9220.

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

Conferee: Frances M. Hicks
Lead, Petitions Examiner

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FOLEY & LARDNER LLP
PO BOX 80278
SAN DIEGO CA 92138-0278

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OFFICE OF PETITIONS

In re Application	:
Ronald M. Evans	:
Application No. 09/840,008	: DECISION ON APPLICATION
Filed: April 20, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. SALK 2270-4	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705," filed February 17, 2005.[1] Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to one hundred twenty-four (124) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein. However, Applicant's request that an additional PTO delay of one hundred eighty-five (185) days be assessed is being **HELD IN ABEYANCE** until after the actual patent date.

Applicant is given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicant may seek such reconsideration without payment of the fee if the sole reason for seeking reconsideration under 37 C.F.R. § 1.705(d) is that the patent failed to issue within three years. A copy of this decision should accompany applicant's written request for reconsideration.

---

[1] This application for patent term adjustment was timely filed, as it was filed after the mailing of the Notice of Allowance and together with the payment of the issue fee.

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 **zero (0) days** (154 days of PTO delay and 285 days of applicant delay). A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 18, 2004, 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 zero (0) days.

Applicant specifically states that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred fifty-four (154) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicant's delay of one hundred fifty-eight (158) days, thirty-six (36) days, and ninety-one (91) days, all pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b), and ninety-three (93) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustments of 154, 158, 36, and 91 days have been reviewed and found to be correct. The adjustment of 93 days is at issue.

The adjustment of 93 days has been found to be incorrect. Applicant filed an amendment on April 20, 2004. In response, the Office mailed a Notice of Non-Responsive Amendment on June 25, 2004 and again on July 1, 2004. Applicant timely filed an Amendment on July 22, 2004, in which he pointed out his belief that the Notice of Non-Responsive Amendment was erroneous. In reply, the Office mailed a Notice of Allowance and a Notice of Allowability on November 18, 2004. The Notice of Allowability was silent as to Applicant's contention that the Notice of Non-Responsive Amendment was erroneously mailed.

In view thereof, it is concluded that Applicant should not have been assessed ninety-three (93) days of delay pursuant to 37 C.F.R. § 1.704(c)(7).

Accordingly, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **zero (0) days** (154 days of PTO delay and 285 days of applicant delay).

The $200 fee set forth in 37 C.F.R. 1.18(e) has been charged to Deposit Account No. 50-0872, as authorized.

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.

Karin A Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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Paper No. 7

DIGIMARC CORPORATION
19801 SW 72ND AVENUE
SUITE 100
TUALATIN, OR 97062

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OFFICE OF PETITIONS

In re Application of
Davis et al.
Application No. 09/840,018
Filed: April 20, 2001
Attorney Docket No. P0363

ON PETITION

This is a decision on the "PETITION FOR ACCEPTANCE OF UNINTENTIONALLY DELAYED CLAIM OF PRIORITY," filed April 24, 2002. This petition was recently forwarded to the Office of Petitions for consideration. The Office apologizes for the delay in responding to the present petition.

The petition is **GRANTED**.

Applicant petitions for the acceptance of the unintentionally delayed claim of benefit of U.S. provisional application 60/198,857, filed April 21, 2000, in U.S. Application No. 09/840,018, filed April 20, 2001. A petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, is applicable as the application was filed on or after November 29, 2000. Further, the petition is appropriate as the period set forth in 37 CFR 1.78(a)(5)(ii) for timely submitting the reference has expired, yet the nonprovisional application is still pending.

The surcharge set forth in 37 CFR 1.17(t) has been charged to Deposit Account No. 50-1071, as authorized. The petition includes a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional. The application was filed with an application data sheet which included references to two prior nonprovisional applications, but not to the instant prior provisional application. Accompanying the petition is a preliminary amendment, amending the first sentence of the specification following the title to also include the reference to the prior provisional application. See 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5). Finally, the instant nonprovisional application, filed April 20, 2001, was filed within one year of the provisional application, filed April 21, 2000, for which benefit is sought.

Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119(e), the petition to accept an unintentionally delayed claim

benefit to prior filed provisional Application No. 60/198,857 is granted as of the date of filing the petition.

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, which will include entry of continuity with prior filed provisional Application No. 60/198,857, and for mailing of a corrected filing receipt. Thereafter, the application will be forwarded to Technology Center AU for processing the amendment filed April 24, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application(s), Application No(s). 60/198,857, filed on April 21, 2000.

Telephone inquiries pertaining to this decision may be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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JUN 07 2005

Director's Office
Group 3700

NIXON & VANDERHYE, PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203

In re Application of
HEDLUND ET AL.
Application No.: 09/840,029
Filed: April 24, 2001

DECISION ON PETITION

This is a decision on petitioner's request filed August 16, 2004, requesting withdrawal of the restriction requirement in the office action mailed on March 17, 2004. The restriction requirement was made final in the office action mailed on July 22, 2004.

The petition is granted.

MPEP 806.03 states in part:

Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.

MPEP 806.05(c) states in part:

III. SOME COMBINATION CLAIMS RECITE SPECIFIC FEATURES OFTHE SUB-COMBINATION BUT OTHER COMBINATION CLAIMS GIVE EVIDENCE THAT THE SUBCOMBINATION IS NOT ESSENTIAL TO THE COMBINATION.

AB_{sp} /AB_{br} (Evidence Claim)/B_{sp} Restriction Proper

> Claim AB_{br} is an evidence claim which indicates that the combination does not rely upon the specific details of the subcombination for its patentability. If claim AB_{br} is subsequently found to be unallowable, the question of rejoinder of the inventions restricted must be considered and the letter to the applicant should so state. Therefore, where the combination evidence claim AB_{br} does not set forth the details of the subcombination B_{sp} and the subcombination B_{sp} has separate utility, the inventions are distinct and restriction is proper if reasons exist for insisting upon the restriction.

Petitioner has requested that the restriction requirement between Groups I, II, III and claims 31-36 as set forth in the office actions of March 17, 2004 and July 22, 2004 be withdrawn. Claims 18-30 which were directed to Groups IV, V, and VI have been canceled.

A review of the claims reveals that claims of Groups II and III, and claims 31-36 are directed to a single embodiment of the combination of the magnetic resonance (MR) microscopy method and merely vary in breath and /or scope of definition. As such restriction between these claims is improper. MPEP 806.03. It is further noted that examiner failed to provide a reason for restriction between Groups II and III in the restriction requirement mailed March 17, 2004.

Group I is directed to a subcombination of Groups II, III and claims 31-36. MPEP 806.05(c) III indicates that restriction is proper when there is an evidence claim that indicates that the combination does not rely upon the specific details of the subcombination for its patentability and the subcombination has separate utility. A review of subcombination claim 1 and combination claim 6 indicate that combination claim 6 does not require the details of subcombination claim 1. In particular, claim 6 does not require generation of a trigger signal found in claim 1 and claim 1 has separate utility as being used in other medical testing procedures, for example, referencing an optic perfusion study to the heart cycle or performing heart-synchronized echocardiographic study.

Since the restriction requirement was at least partially improper due to the division of claims 6-17 and 31-36, the requirement is withdrawn. Any restriction requirement between the subcombination and combination must be set forth again and petitioner given the opportunity to elect an invention based upon a proper restriction.

While the restriction requirement is being withdrawn, it is noted that petitioner's argument with regard to no burden of search and claims having at least one common limitation were not found persuasive. The fact that the examiner searched the class and subclass where the combination is classified is not an indicator as to whether additional class/subclasses would need to be searched for the combination. As discussed above, the test for restriction between combination and subcombination claims is not whether there is common subject matter but whether the details of the subcombination are required for patentability in the combination and that the subcombination has separate utility.

Petitioner's current claims include evidence claim 6. In addition, the common subject matter argued by petitioner was not indicated as allowable by the examiner in claim 1.

It is also noted that a petition for acceptance of color drawings was filed and has not yet been decided. This petition will be brought to the attention of the deciding official, the supervisory patent examiner.

Summary: petition granted.

The application will be forwarded back to the examiner for action not inconsistent with this decision.

Richard A. Bertsch, Director
Technology Center 3700

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OFFICE OF PETITIONS

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901 NORTH GLEBE RD
11TH FLOOR
ARLINGTON VA 22203

In re Application of
Hedlund, et al.
Application No. 09/840,029
Filed: April 24, 2001
Attorney Docket No. 1579-561

:DECISION DISMISSING PETITION
:UNDER § 1.183

This is a decision on the petition under 37 C.F.R. § 1.183, filed July 11, 2005, to waive the requirement under § 1.136(a) for an extension of time fee.

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

Petitioner is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.183".

On March 17, 2004, the Office mailed a restriction requirement. Applicants filed a election, with traverse, on April 7, 2004. The next Office action mailed was on July 22, 2004. Applicants then filed a petition for withdrawal of the restriction requirement set forth in the March 17, 2004 Office action. Before a decision was mailed, Applicants filed a reply to the July 22, 2004 Office action on October 21, 2004. The Office mailed a response on January 12, 2005. Next, the Office mailed a decision granting the petition on June 7, 2005. Applicants have filed the instant petition, together with a response to the January 12, 2005 Office again, on July 11, 2005. Applicants request that the fee for a three month extension of time be waived.

Under 37 C.F.R. § 1.183, any requirement of the regulations, which is not a requirement of the statutes, may be waived by the Commissioner's designee in an extraordinary situation, when justice so requires. Petitioner has neither demonstrated that this is an extraordinary situation, or that justice requires waiver of the rules. 37 C.F.R. § 1.181 states that the mere filing of a petition (in this case, the petition for withdrawal of the restriction requirement) "will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings." Applicants could have filed a response to the January 12, 2005 non-final Office action on or by April 12, 2005 without an extension of time.

The $510 fee for a three month extension of time has been charged to Deposit Account No. 14-1140, as authorized.

The matter is being forwarded to the Office of Patent Publications for processing into a patent.

Telephone inquiries related to this decision may 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
Washington, D.C. 20231
www.uspto.gov

Paper No. 6

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RESTON VA 20190

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FEB 2 1 2002

OFFICE OF PETITIONS

In re Application of James H. Johnson and John Didomenico Application No. 09/840,080 Filed: April 24, 2001 Attorney Docket No. 47382.000123 Title: REMOTE VEHICLE EMISSION SENSING DEVICE WITH SINGLE DETECTOR	: : : : : : :	DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(b)

This is in response to the petition under 37 CFR §1.47(b)[1], filed November 21, 2001.

The petition under 37 C.F.R. §1.47(b) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application**. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

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1 A grantable petition under 37 CFR §1.47(b) requires:

(1) The petition fee;
(2) a surcharge if the petition was not filed at the time of filing of the application;
(3) a statement of the last known address of each of the non-signing inventors;
(4) proof that a copy of the application was sent or given to each of the non-signing inventors for review;
(5) proof that each of the non-signing inventors refused to sign;
(6) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application;
(7) proof of irreparable damage, and;
(8) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 and 37 CFR §1.63.

The above-identified application was filed on April 24, 2001. On May 10, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the instant petition (and fee), the surcharge associated with the late filing of an oath or declaration, a declaration executed by neither inventor, a statement from the petitioner, a declaration from Christopher Cuneo (an attorney of record) which establishes a proprietary interest, a statement of facts from Mr. Cuneo, copies of letters sent to both non-signing inventors, and a declaration executed by Niranjan Vescio (an employee of the purported assignee) (Corporate Secretary of the Assignee). To make timely this reply, a four-month extension of time was requested. This fee has been charged to counsel's Deposit Account, as authorized in the petition.

Rule 47 applicant has met requirements (1), (2), (6), and (8) above.

Regarding requirement (3) above, petitioner has failed to provide a statement of the last known address of each of the non-signing inventors.

Regarding requirement (4) above, petitioner has failed to establish that each of the inventors was presented with a complete copy of the application. Each of the letters sent to the non-signing inventors request that the recipient contact the sender so that copies of the necessary documents can be reviewed and executed. This language indicates that complete copies of the application were not sent to the non-signing inventors for review.

Regarding requirement (5) above, in view of the preceding paragraph, it follows that one cannot refuse to sign something which he has not been provided with.

Regarding requirement (7) above, there has been no showing of proof of irreparable damage.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By FAX:	(703) 308-6916 Attn: Office of Petitions
By hand:	Crystal Plaza Four, Suite 3C23 2201 S. Clark Place Arlington, VA

Telephone inquiries regarding this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

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

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OFFICE OF PETITIONS

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
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In re Application of
James H. Johnson and John DiDomenico
Application No. 09/840,080
Filed: April 24, 2001
Attorney Docket No. 47382.000123
Title: REMOTE VEHICLE EMISSION SENSING DEVICE WITH SINGLE DETECTOR

DECISION ON PETITION UNDER 37 C.F.R. §1.137(b) and 37 C.F.R. §1.47(a)

This is in response to the renewed petition under 37 CFR §1.47(b)[1], filed April 22, 2002.

The renewed petition under 37 C.F.R. §1.47(b) is **DISMISSED**.

NOTICE:

Any request for reconsideration of this decision under 37 C.F.R. § 1.147(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

[1]A grantable petition under 37 CFR 1.47(b) requires:

(1) The petition fee;
2) a surcharge if the petition was not filed at the time of filing of the application;
(3) a statement of the last known address of each of the non-signing inventors;
(4) proof that a copy of the application was sent or given to each of the non-signing inventors for review;
(5) proof that each of the non-signing inventors refused to sign;
(6) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application;
(7) proof of irreparable damage, and;
(8) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 and 37 CFR 1.63.

under 37 C.F.R. §1.147(b)," and should only address the deficiencies noted in this decision, **except that the reply may include an oath or declaration executed by the non-signing inventor**.

Thereafter, there will be no further reconsideration of this matter[2, 3].

The above-identified application was filed on April 24, 2001, without an executed oath or declaration and identifying James H. Johnson and John Didomenico as joint inventors. On May 10, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted", requiring an executed oath or declaration in compliance with 37 CFR §1.63, and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the original petition, along with the associated fee and the fee associated with the late filing of an oath of declaration, and a declaration executed by neither inventor.

In a decision mailed on February 21, 2002, the original petition was dismissed for failure to meet requirements (3), (4), (5), and (7) above.

With the instant petition, petitioner has satisfied requirements (3) and (7) above.

With the renewed petition, the petitioner has filed a statement of the last addresses of both non-signing inventors, copies of several letters sent to the inventors, a copy of a letter sent in response from inventor DiDomenico, and a declaration of facts, executed by an employee of the assignee, which establishes irreparable harm.

Regarding the fourth requirement, petitioner has included copies of the letters sent to each of the non-signing inventors. The copy of the letter sent to inventor Johnson references the enclosure of applications 09/480,688, 09/457,391, and 09/520,166. It is noted that 09/480,688 is the grandparent of the instant application. Hence, it has been established that a copy of the grandparent to this application has been sent to the non-signing inventor.

The copy of the letter sent to inventor DiDomenico mentions the enclosure of an application. Unfortunately, the letter references application no. 09/480,699, Attorney Docket No. 47382.000039. The letter which petitioner received from the non-signing inventor referenced application no. 09/428,992. Neither of these two applications appears to be related to the instant application. As such, it is not clear how this letter can constitute evidence of petitioner's allegation that "a copy of the application was sent to each inventor for their review.[4]"

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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.

3 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.

4 Renewed petition, page 2.

Where a refusal of the inventor to sign the application papers is alleged, the Office requires the petitioner to establish that a bona fide attempt was made to mail a complete copy of the application, which entails the specification, claims, drawings, and oath or declaration[5]. On renewed petition, it should be established that a complete copy of the application was sent to the non-signing inventor.

Regarding the fifth requirement above, it follows that since it has not been shown that a complete copy of the application was sent to the inventor, one cannot refuse to sign something which one has not seen. 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. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 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[6].

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By FAX:	(703) 308-6916 Attn: Office of Petitions
By hand:	Crystal Plaza Four, Suite 3C23 2201 S. Clark Place Arlington, VA 22202

Telephone inquiries regarding this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

Nancy Johnson for

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

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5 See MPEP 409.03(d).

6 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

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Paper No. 11

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RESTON VA 20190

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OFFICE OF PETITIONS

In re Application of : James H. Johnson and John DiDomenico Application No. 09/840,080 Filed: April 24, 2001 Attorney Docket No. 47382.000123 Title: REMOTE VEHICLE EMISSION SENSING DEVICE WITH SINGLE DETECTOR	: DECISION GRANTING STATUS : ON RENEWED PETITION : UNDER 37 CFR 1.47(b)

This is in response to the "Second renewed petition under 37 CFR §1.47(b)[1], filed December 17, 2002[2].

The above-identified application was filed on April 24, 2001, without an executed oath or declaration and identifying James H. Johnson and John Didomenico as joint inventors. On May 10, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted", requiring an executed oath or declaration in compliance with 37 CFR §1.63, and a surcharge for its late filing. This Notice set a two-month period for reply.

On November 13, 2001, the original petition was filed, which was dismissed via a decision mailed on February 21, 2002. On April 22, 2002, the renewed petition was filed, which was dismissed via a decision mailed on August 29, 2002.

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1 A grantable petition under 37 CFR 1.47(b) requires:

(1) The petition fee;
2) a surcharge if the petition was not filed at the time of filing of the application;
(3) a statement of the last known address of each of the non-signing inventors;
(4) proof that a copy of the application was sent or given to each of the non-signing inventors for review;
(5) proof that each of the non-signing inventors refused to sign;
(6) proof that the Rule 47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application;
(7) proof of irreparable damage, and;
(8) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 and 37 CFR 1.63.

2 On June 9, 2003, a supplemental letter was received via facsimile transmittal.

With the Second renewed petition, and the supplemental letter, the procedures set forth meet the requirements of this section of the Code of Federal Regulations, in that the documents submitted establish that a complete copy of the application was sent to the first named non-signing inventor, and he has failed to respond, and that the second named inventor cannot be located. Petitioner has also included a two-month extension of time to make timely this request.

As such, the above-identified 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 inventors at the addresses 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 application will be forwarded to Technology Center 3600 for further processing.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

United States Patent and Trademark Office

John DiDomenico
8810 East Bear Paw Place
Tucson, AZ 85749

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OFFICE OF PETITIONS

In re Application of : James H. Johnson
and John DiDomenico
Application No. 09/840,080
Filed: April 24, 2001
Attorney Docket No. 47382.000123
Title: REMOTE VEHICLE EMISSION SENSING
DEVICE WITH SINGLE DETECTOR

LETTER

Dear Mr. DiDomenico:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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, agent 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0011. 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 the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

MINTZ LEVIN COHN FERRIS GLOVSKY AND
POPEO PC
ONE FOUNTAIN SQUARE
11911 FREEDOM DRIVE, SUITE 400
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United States Patent and Trademark Office

James H. Johnson
4401 West Crestview Road
Tucson, AZ 85745

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OFFICE OF PETITIONS

In re Application of : James H. Johnson
and John DiDomenico
Application No. 09/840,080
Filed: April 24, 2001
Attorney Docket No. 47382.000123
Title: REMOTE VEHICLE EMISSION SENSING
DEVICE WITH SINGLE DETECTOR

LETTER

Dear Mr. Johnson:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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, agent 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0011. 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 the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Paul Shanoski

Paul Shanoski
Attorney
Office of Petitions
United States Patent and Trademark Office

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POPEO PC
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MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004

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OFFICE OF PETITIONS

In re Application of	:	
Lim et al.	:	DECISION ON PETITION TO
Application No. 09/840,082	:	WITHDRAW HOLDING OF
Filed: 24 April, 2001	:	ABANDONMENT
Attorney Docket No. 049128-5006	:	

This is a decision on the petition filed on 20 December, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely reply to the Decision of the Board of Patent Appeals mailed on 25 August, 2006, which set a two (2)-month statutory period for reply. Notice of Abandonment was mailed on 3 November, 2006.

Petitioners assert that the Board Decision mailed on 25 August, 2006, was never received.

In the absence of any irregularity in the mailing of the Board Decision, there is a strong presumption that the Board Decision was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Board Decision was not in fact received. 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 action 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). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion

that the Board Decision may have been lost after receipt rather than a conclusion that the Board Decision was lost in the mail.

A review of the record indicates that the Board Decision was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Board Decision on the part of the United States Patent and Trademark Office.

In support, the petition includes a statement from the practitioner, Robert J. Goodell, stating that the Board Decision was not received by the practitioner, and attesting to the fact that a search of the application file and the docket records indicates that the Board Decision action was not received. A copy of counsel's docket report where the non-received Board Decision would have been entered had it been received and docketed is attached.

The petitioner has made a sufficient showing of nonreceipt of the Board Decision. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED.**

It is noted that applicant has filed a Request for Continued Examination and a submission under 37 CFR 1.114 in reply to the Board Decision mailed on 25 August, 2006, with the present petition. As such, remailing of the Board Decision is not necessary, and the Board Decision will not be remailed.

The application file is being referred to Technology Center Art Unit 2871 for consideration of the RCE and submission.

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

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Paper No. 14

Young & Thompson
745 South 23RD Street 2nd Floor
Arlington, VA 22202

APR - 2 2004

In re Application of:
Kenji Kataoka
Serial No.: 09/840,142
Filed: April 24, 2001
Attorney Docket No.: **ND-387US**

NOTICE OF WITHDRAWAL
FROM ISSUE
UNDER 37 CFR § 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR § 1.313.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed April 10, 2003, are hereby vacated.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

Upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that any previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund, or a credit to a Deposit Account.

Telephone inquires should be directed to Brian Sircus at (571) 272-2058.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

Richard Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Patent No. 6785198
Issue Date: August 31,2004
Application No. 09840202
Filed: April 23,2001
Attorney Docket No. 98-896

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

This is a decision on the electronic petition, filed December 27,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 27,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6785198	2004-08-31	09840202	2001-04-23	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 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	/Howard Lee/	Date (YYYY-MM-DD)	2009-12-27
Name	Howard Hong-Dough Lee		

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. 6823489
Issue Date: November 23,2004
Application No. 09840218
Filed: April 23,2001
Attorney Docket No. US 010190

:
: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 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 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)
6823489	2004-11-23	09840218	2001-04-23	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 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.

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4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

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WASHINGTON, D.C. 20231
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JJGJr: 12-01

Paper No. 4

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK, NY 10154

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OFFICE OF PETITIONS

In re Application of
Stubblebine
Application No. 09/840,230
Filed: 24 April, 2001
Attorney Docket No. 2455-4230US3

This is a decision on the petition filed on 5 October, 2001, under 37 C.F.R. §1.181 but more properly treated as a petition under 37 C.F.R. §1.53, requesting that Figure 1, as described in the specification, be accorded a filing date of 24 April, 2001.

The petition is **GRANTED**.[1]

The application was deposited on 24 April, 2001, and stated in the transmittal that enclosed therewith were, *inter alia*, 51 pages of specification, 1 page of abstract, 13 pages of claims and 21 sheets of formal drawings.

The Office mailed on 9 August, 2001, a "Notice of Omitted Items in a Nonprovisional Application" stating that a review of the record indicated that omitted from the filing was Figure 1 as described in the specification, and setting a two- (2-) month non-extendable period from the date of the mailing within which to respond .

Petitioner responded timely on 5 October, 2001, with the instant petition, a copy of the Office-stamped filing receipt card, a copy of document identified as Figure 1 Prior Art, the petition fee, and a copy of the Notice.

A review of the application papers reveals that prior to the instant petition the record contained 20 sheets of drawings, none of which is identified as Figure 1.

A review of the stamped receipt card (two copies: one stamped with the filing date of 24 April, 2001, and the other labeled with the Office bar code and application number) reflects Office receipt of documents, inter alia, "21 Sheets of Drawings (FIGS. 1-6)."

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that 21 sheets of drawings, including Figure 1,

[1] No petition fee was assessed upon filing; therefore, no refund/credit is due.

were filed on 24 April, 2001, and that the one sheet of drawings containing Figure 1 was subsequently misplaced in the Office.

Accordingly, the petition is **granted**.

The "Notice of Omitted Items" mailed on 9 August, 2001, is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 24 April, 2001, using the twenty (20) sheets of drawings filed on 24 April, 2001, and the one sheet of drawings containing Figure 1 supplied on 5 October, 2001, with an indication on the PALM bib data sheet that 21 sheets of drawings were present on filing.

Telephone inquiries concerning this matter may be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703)305-9199.

Beverly M. Flanagan for

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

Beverly M. Flanagan

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MR. S. H. DWORETSKY
AT&T CORP
P O BOX 4110
MIDDLETOWN, NJ 07748

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FEB 0 3 2006

OFFICE OF PETITIONS

In re Application of :
Stuart Gerald Stubblebine :
Application No. 09/840,230 :
Filed: April 24, 2001 :
Attorney Docket No. 2455-4230US3 :

ON PETITION

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

The petition is **DISMISSED**.

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

A grantable petition under 37 CFR 1.137(b)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee 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.

It is noted that an amendment, in response to the final Office action mailed June 17, 2004, was included with the petition filed on November 14, 2005. However, the amendment is considered non-responsive, since it does not place the application in condition for allowance. See the attached copy of an Advisory Action. The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an

[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.

amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2).

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

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

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

The centralized facsimile number is **(571) 273-8300**.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

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

Attachment: Advisory Action

cc: HENRY BRENDZEL
PO BOX 574
SPRINGFIELD, NJ 07081

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
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MR. S H DWORETSKY
AT&T CORP
P O BOX 4110
MIDDLETOWN, NJ 07748

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OFFICE OF PETITIONS

In re Application of	:	
Stuart G. Stufflebine	:	
Application No. 09/840,230	:	ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. 2455-4230US3	:	

This is a decision on the renewed petition under 37 CFR 1.137(b) to revive the above-identified application, filed on March 20, 2006.

The application is being revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

The petition, as supplemented, is found to be in compliance with the requirements of 37 CFR 1.137(b). Accordingly, the petition is **GRANTED**.

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

The application is being referred to Technology Center AU 2135, for further processing of the request for continued examination under 37 CFR 1.114 filed March 20, 2006.

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

ROGER PITT
KIRKPATRICK & LOCKHART NICHOLSON GRAHAM LLP
599 LEXINGTON AVENUE
33RD FLOOR
NEW YORK NY 10022-6030

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AUG 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Stiliadis	:	
Application No. 09/840,283	:	DECISION ON PETITION
Filed: April 23, 2001	:	TO WITHDRAW
Attorney Docket No. NS2	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 24, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. 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 Office cannot approve the request at this time since the reasons provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reasons set forth in the request, "the attached copy of written instructions from an overseas representative of the assignee", does not meet any the conditions set forth in 37 CFR 10.40.

In order to request or take action in a patent matter, the assignee must establish its ownership of the patent to the satisfaction of the Director. In this regard, a Statement under 37 CFR 3.73(b) must have either: (i) documentary evidence of a chain of title from the original owner to the

assignee (*e.g.*, copy of an executed assignment), and a statement affirming that the documentary evidence of the chain of title from the original owner to the assignee was or concurrently is being submitted for recordation pursuant to § 3.11; or (ii) a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (*e.g.*, reel and frame number).

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

Telephone inquiries concerning this decision should be directed to April Wise at 571-272-1642.

David Bucci
Petitions Examiner
Office of Petitions

cc: Anthony H. Handal, ESQ.
Brown, Rudnick, Berlack & Israels, LLP
Seven Times Square
New York, NY 10036

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Y. ROCKY TSAO
FISH & RICHARDSON P.C. (BOSTON)
225 FRANKLIN ST.
BOSTON, MA 02110

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OFFICE OF PETITIONS

In re Application of
CHIANG, LONG Y.
Application No. 09/840,322
Filed: April 23, 2001
Attorney Docket No. 06897-006001

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 31, 2005.

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 Y. Rocky Tsao #34,053 on behalf of all attorneys of record.

Y. Rocky Tsao #34,053, Eric L. Prahl #32,590, John F. Hayden #37,640, Frank R. Occhiuti #35,306, John T. Li #44,210, and Harold H. Fox #41,498 have been withdrawn as attorneys or agents of record.

Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

The application became abandoned for failure to respond to the Office Action mail June 16, 2005.

Telephone inquiries concerning this decision should be directed to Amelia Au at 571-272-7414.

Amelia Au
Petitions Examiner
Office of Petitions

cc: LONG Y. CHIANG
3 TUTTLE DRIVE
ACTION, MA 01720

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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JUN 07 2010

OFFICE OF PETITIONS

MITSUBISHI ELECTRIC RESEARCH LABORATORIES, INC.
201 BROADWAY
8TH FLOOR
CAMBRIDGE MA 02139

In re Patent No. 6,950,600 :
Issue Date: September 27, 2005 : ON PETITION
Application No.: 09/840,334 :
Filed: April 23, 2001 :
Attorney Docket No.: :

This is a decision on the petition, first filed March 22, 2010, under 37 CFR 1.378(b) to accept the unavoidably delayed payment of the 3.5-year maintenance fee for the above-identified patent. The instant petition will also be treated as a petition under 37 CFR 1.378(c) to accept unintentionally delayed payment of the 3.5-year maintenance fee.

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

The petition under 37 CFR 1.378(b) is **DISMISSED AS MOOT.**

TREATMENT UNDER 37 CFR 1.378(c)

The patent issued September 27, 2005. The grace period for paying the 3.5-year maintenance fee expired at midnight September 27, 2009. Therefore, since the petition was filed within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), this petition was timely filed under the provisions of 37 CFR 1.378(c).

Accordingly, the 3.5-year maintenance fee of $980.00 along with the surcharge of $1640.00 was received on March 22, 2010, and is accepted. The above-identified patent is hereby reinstated as of the mail date of this decision.

It is noted that 37 CFR § 1.378(c) requires a statement that the entire delay between the date the 3.5-year maintenance fee was due and the date a grantable petition was filed was unintentional. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §1.378(c). If this is not a correct reading of the statement appearing in the petition, petitioner should promptly notify the Office.

TREATMENT UNDER 37 CFR 1.378(b)

It is noted that petitioner used the form for a petition under 37 CFR 1.378(b) and made some intimation that the delay in paying the 3.5-year maintenance fee was unavoidable. It is further noted, however, that petitioner paid the surcharge of $1,640.00 required under 37 CFR 1.378(c). As the showing made in the petition did not rise to evidentiary level required for a

petition under 37 CFR 1.378(b) and petitioner paid the surcharge for a petition under 37 CFR 1.378(c), the petition was considered and is granted under 37 CFR 1.378(c). Accordingly, there is no relief that can be provided by a petition under 37 CFR 1.378(b); the petition is, therefore, dismissed as moot.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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Keating & Bennett LLP
Suite 312
10400 Eaton Place
Fairfax,VA 22030

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MAR 09 2005

OFFICE OF PETITIONS

In re Application of :
Hajime Kandou, et al. :
Application No. 09/840,359 : ON PETITION
Filed: April 23, 2001 :
Attorney Docket No. 36856.472 :

This is a decision on the petition, filed February 22, 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 May 12, 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 (571) 272-3204.

The application is being referred to Technology Center AU 2834 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).

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SALTER & MICHAELSON
321 SOUTH MAIN STREET
PROVIDENCE RI 02903

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SEP 0 7 2004
OFFICE OF PETITIONS

In re Application of
Wong
Application No. 09/840,426
Filed: April 20, 2001
For: INTERCHANGEABLE PIEZOELECTRIC LIGHTER
Pub. No.: US 2002/0155408 A1
Pub. Date: October 24, 2002

This is a decision mailed on the request for corrected patent application publication under 37 CFR 1.221(b), filed on May 8, 2003 for the above-identified application.

The request is DISMISSED.

The decision is being mailed to the correspondence address of record according to the change in the power of attorney and a copy of the decision is being mailed to Mr. Raymond Y. Chan, who is acting in a representative capacity.

The instant request is that the application be republished because the patent application publication includes the wrong drawings and does not include the drawings filed with the application.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

The request for corrected publication received on May 8, 2003, was not timely filed under 37 CFR 1.221(b).

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[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(a), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

The application is being forwarded to the Office of Petitions to review the papers received on May 8, 2003 to determine if the evidence submitted is sufficient to replace the drawings in the application file with the drawings (Figs. 1-4) submitted on May 8, 2003.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice).

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

cc:
David and Raymond Patent Group
1050 Oakdale Lane
Arcadia, CA 91006

UNITED STATES PATENT AND TRADEMARK OFFICE

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SALTER & MICHAELSON
321 SOUTH MAIN ST
PROVIDENCE RI 02903

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JUN 23 2005

OFFICE OF PETITIONS

In re Application of	:	
Ming King Wong	:	
Application No. 09/840,426	:	DECISION DISMISSING PETITION
Filed: April 20, 2001	:	
Attorney Docket No. 02369	:	

This is a decision on the "REQUEST FOR CORRECTED APPLICATION PUBLICATION", filed May 8, 2003, which after being dismissed in a decision mailed on September 7, 2004, has been forwarded to the Office of Petitions to consider whether there is sufficient evidence to replace the drawings in the file with the drawings supplied May 8, 2003.

The request is **DISMISSED.**

Application papers in the above-identified application were filed on April 20, 2001. The application published on October 24, 2002. On May 8, 2003, applicant filed the instant request for corrected publication, stating that the application published with drawings different than those allegedly filed. The request was dismissed due to timeliness, and was forwarded to the Office of Petitions to consider whether there is sufficient evidence to replace the drawings in the file with the drawings supplied May 8, 2003.

Applicant has submitted a postcard receipt, itemizing "DRAWING: NO. SHEET(S): 4" as enclosed, and bearing a USPTO date stamp of April 20, 2001.

The Office file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. It is true that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office.[1] However, in this instance applicant's postcard receipt is not sufficient to prove that the four sheets of drawings supplied on May 8, 2003 were the four sheets of drawings received by the Office on April 20, 2001.

The four sheets of drawings filed on May 8, 2003 will remain in the application file, but will not be used for examination.

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.

The application file is being forwarded to Group Art Unit 3749 for docketing and examination in due course.

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

Cliff Congo
Petitions Attorney
Office of Petitions

cc: Raymond Y. Chan
108 N. Ynez Ave.
Suite 128
Monterey Park, CA 91754

---

[1] MPEP 503.

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Paper No. 8

SALTER & MICHAELSON
321 SOUTH MAIN ST
PROVIDENCE RI 02903

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JUN 30 2006

OFFICE OF PETITIONS

In re Application of Ming King Wong Application No. 09/840,426 Filed: April 20, 2001 Attorney Docket No. 02369	: : : : :	DECISION GRANTING PETITION

This is a decision on the "PETITION TO CORRECT ERROR IN FILING OF AN APPLICATION", filed September 6, 2005, which is being treated as a petition under 37 CFR 1.182 to replace the drawings in the file with the drawings supplied May 8, 2003.

The petition is **GRANTED.**

Application papers in the above-identified application were filed on April 20, 2001. The application published on October 24, 2002. On May 8, 2003, applicant filed the a request for corrected publication, stating that the application published with drawings different than those allegedly filed. The request was dismissed due to timeliness, and was forwarded to the Office of Petitions to consider whether as sufficient evidence to replace the drawings in the file with the drawings supplied May 8, 2003. The petition was dismissed in a decision mailed on June 23, 2005. While petitioner submitted a postcard receipt, itemizing four sheets of drawings, it was not sufficient to prove that the four sheets of drawings supplied on May 8, 2003 were the four sheets of drawings filed on April 20, 2001.

On renewed petition, petitioner has supplied convincing evidence to establish that the Office received the four sheets of drawings on April 20, 2001, but placed them into application no. 09/840,511. Conversely, the drawings belonging in application no. 09/840,511 were placed into the instant application. Petitioner has submitted copies of certified copies of Application Nos. 09/840,426 and 09/840,511, both filed on April 20, 2001. It is clear from the evidence presented on petition that the drawings in both applications were filed on April 20, 2001, but were mistakenly swapped between the two applications.

Given the basis for granting this petition, no fee has been charged.

The four sheets of drawings originally placed in the application file have been returned to application no. 09/840,511 (now Patent No. 6,757,569).

The application file is being forwarded to Group Art Unit 3749 for examination in due course, using the drawings supplied May 8, 2003.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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WILLIAM W. HAEFLIGER
SUITE 512
201 SO. LAKE AVE.
PASADENA CA 91101

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In re Patent No. 6,923,812
Issue Date: August 02, 2005
Application No. 09/840,441
Filed: July 30, 2001
Attorney Docket No. 12,222

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed November 16, 2009, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on August 02, 2009 for failure to pay the three 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 Michelle R. Eason at (571) 272-4231.

The patent file is being forwarded to Files Repository.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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WASHINGTON, D.C. 20231
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MAR 21 2003

Technology Center 2100

Paper No. 3

Lucash, Gesmer & Updegrove, LLP
40 Broad Street
Suite 300
Boston, MA 02109

In re Application of: John J. Bowe, et al. Application No. 09/840,472 Filed: April 23, 2001 For: SERVER-SIDE DIGITAL SIGNATURE SYSTEM	))))))	**DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY**

This is a decision on the Request To Withdraw from Representation filed March 4, 2003.

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 withdrawal 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.**

There is no indication that Applicant has been notified of the request for withdrawal. Accordingly, the request is **DENIED**.

All future communications from the United States Patent and Trademark Office (Office) will continue to be directed to the above-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

For Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATEN
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WASHINGTON, D.C. 2023
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APR 1 0 2003

Paper No. 5

Technology Center 2100

Paul L. Speidel
LUCASH, GESMER & UPDEGROVE, LLP
40 Broad Street
Suite 300
Boston, MA 02109

In re Application of:	)	
John J. Bowe, et al.	)	
Application No. 09/840,472	)	**DECISION ON REQUEST FOR**
Filed: April 23, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: SERVER-SIDE DIGITAL SIGNATURE SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed March 27, 2003.

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 withdrawal 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 filed March 27, 2003 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

For James R. Matthews

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: Peter Liebewirth
140 Indian Hill Road
Carlisle, MA 01741

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February 2005

Corning Cable Systems LLC
P.O. Box 489
Hickory, NC 28603

FEB - 7 2005

In re Application of:
Chanh C. Vo
Serial No.: 09/840,482
Filed: April 23, 2001
Attorney Docket No.: HE0186

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181 filed via facsimile transmission on November 1, 2002. There is no fee for this petition.

The petition is **DENIED**.

This application became abandoned for failure to timely file a proper reply to the final Office action mailed on February 26, 2002. A Notice of Abandonment was mailed on October 23, 2002.

Petitioner asserts that a response to the Office action of February 26, 2002 was timely filed via facsimile transmission on May 7, 2002. The evidence provided by the petitioner includes a statement which attests upon a personal knowledge basis to the previous facsimile transmission as well as a copy of the sending unit's report confirming transmission. The copy of the response contains the required certificate of facsimile transmission (dated May 7, 2002) under 37 C.F.R. § 1.8 (a)(1)(ii). The evidence is sufficient under 37 C.F.R. § 1.8 (b) to establish that the response was timely filed.

As stated in MPEP section 714.13, a reply to a final rejection under 37 CFR 1.113 is limited to: (A) an amendment complying with 37 CFR 1.116; (B) a Notice of Appeal (and appeal fee); or (C) a request for continued examination (RCE) filed under 37 CFR 1.114 with a submission and the fee set forth in 37 CFR 1.17(e).

In the instant case, applicant filed an amendment after final pursuant to 37 C.F.R. § 1.116. However, the entry of this amendment was not a matter of right. Moreover, the mere filing of an amendment does not act in any way to extend the maximum SIX MONTH statutory period set forth in 35 USC 133. Likewise, the mailing or non-mailing of an Advisory action does act in any way to extend this statutory period.

37 CFR 1.116 provides in part: "(t)he admission of, or refusal to admit, any amendment after

final rejection ... will not operate to ... save the application from abandonment under §1.135." MPEP section 711.03(c) provides in part: "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."

The six month maximum statutory period to file a proper reply to the final Office action expired as of midnight August 26, 2002. As stated above, the evidence provided by petitioner was sufficient to establish that a reply to the final Office action was timely filed via facsimile transmission on May 7, 2002. The only questions are whether the reply would have been entered and if so, whether the reply would have put the application in condition for allowance.

For the answers to those questions, the application file was sent to the examiner to consider the response (i.e., amendment) of May 17, 2002. The enclosed Advisory action prepared by the examiner indicates that the amendment would not have been entered because it raises new issues that would require further consideration and/or search. A review of examiner's decision not to enter the amendment indicates the decision was a reasonable one.

Accordingly, the petition is denied and the application remains abandoned. While it is unfortunate that no Advisory action was previously mailed and that applicant was not previously put on notice that the proposed amendment of May 17, 2002 would not be entered, as noted above, these facts would neither save the application from abandonment nor warrant withdrawal of the holding of abandonment.

Petitioner may wish to consider filing a petition under 37 C.F.R. § 1.137(b).

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.

Richard K. Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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AUG 3 0 2005

OFFICE OF PETITIONS

CORNING CABLE SYSTEMS LLC
P O BOX 489
HICKORY NC 28603

In re Application of	: DECISION on PETITION
CHANH CO. VO et al.	:
Application No.: 09/840,482	: UNDER 37 CFR 1.137(b)
Attorney Docket No.: HE0186	:

This is a decision on the petition under 37 CFR 1.137(b), filed April 15, 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 final Office action mailed February 26, 2002, which set a three month shortened statutory period to file a proper reply. Accordingly, by operation of law, the above-identified application became abandoned at midnight on May 26, 2002. A Notice of Abandonment was mailed on October 23, 2002. Applicant filed a petition to withdraw the holding of abandonment, which was denied on February 7, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a request for continued examination, fee of $790 and submission as required by 37 CFR 1.114; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of February 26, 2002 is accepted as having been unintentionally delayed.

The application is being referred to Technology Center AU 2839.

Telephone inquiries concerning this decision should be directed to Cynthia Kratz at (571) 272-3286 or in her absence, the undersigned at (571) 272-3217.

Francis Ickes for

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper 5

BASF Corporation
Patent Law Department
P.O. Box 400
Princeton, NJ 08543-0400

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JUN 1 2 2002

OFFICE OF PETITIONS

In re Application of
Pees et al.
Application No. 09/840,488
Filed: April 23, 2001
Attorney Docket No. 33350-03

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b) filed March 28, 2002 to revive the above-identified application.

This above-identified application became abandoned for failure to file a response to a Notice to file Missing Parts of a Nonprovisional Application which was mailed on June 8, 2001. The Notice to File Missing Parts set a two (2) month period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on August 9, 2000. This decision precedes the mailing of a Notice of Abandonment.

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

The Office acknowledges receipt of the declaration and power of attorney submitted with the instant petition from prior application 09/272,916.[1]

Deposit account 02-1197 has been charged the $1280.00 petition to revive fee pursuant to 37 CFR 1.17(m) and the $130.00 late oath or declaration fee pursuant to 37 CFR 1.16(e).

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.

This application is being forwarded to the Office of Initial Patent Examination for further processing of the application.

---

[1] See 37 CFR 1.63.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Barbara V. Maurer
Intellectual Property Dept., BASF Corp
3000 Continental Drive-North
Mount Olive, New Jersey 07828-1234

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,488	04/23/2001	Klaus-Juergen Pees	33350-03	5506

26474 7590 08/02/2005

NOVAK DRUCE DELUCA & QUIGG, LLP
1300 EYE STREET NW
SUITE 400 EAST
WASHINGTON, DC 20005

EXAMINER
BERCH, MARK L

ART UNIT	PAPER NUMBER
1624	

DATE MAILED: 08/02/2005

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

The request for deferral/suspension of action under 37 CFR 1.103 has been approved.

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AUG 2 2005

NOVAK DRUCE DELUCA & QUIGG, LLP
1300 EYE STREET NW
SUITE 400 EAST
WASHINGTON DC 20005

In re Application of	:
Klaus-Jurgen Pees et al	:
Serial No.: 09/840,488	: SUSPENSION OF ACTION
Filed: April 23, 2001	:
Attorney Docket No.: 33350-03	:

This is in response to the petition under 37 CFR 1.103(a), filed June 21, 2005, to suspend prosecution of the above identified application for six months.

The petition fee of $200.00 will be charged to applicants' Deposit Account No. 14-1437, as directed. (It is noted that an incorrect petition fee of $130.00 has been charged.)

Applicants seek suspension of prosecution in this application for a period of six months in conjunction with the filing of RCE papers following the mailing of a decision by the Board of Patent Appeals and Interferences on May 31, 2005.

37 CFR 1.103. Suspension of action.

(a) Suspension of action by the Office will be granted for good and sufficient cause and for a reasonable time specified upon petition by the applicant and, if such cause is not the fault of the Office, the payment of the fee set forth in §1.17(I). **Action will not be suspended when a reply by applicant to an Office action is required.**

....

(c) Limited suspension of action after a request for continued application (RCE) under § 1.114 . On request of the applicant, the Office may grant a suspension of action by the Office under this paragraph after the filing of a request for continued examination in compliance with § 1.114 for a period not exceeding three months. Any request for suspension of action under this paragraph must be filed with the request for continued examination under § 1.114, specify the period of suspension, and include the processing fee set forth in § 1.17(i).

M.P.E.P. 709 relates to suspension of action in an application. 37 CFR 1.103(c) permits a **limited suspension** of action upon filing of RCE papers (emphasis added). Applicants state that a copending reissue application has been filed which when granted will extend this applications' priority back sufficient to remove the primary reference used against the claims in this application and request a six month suspension of action in order to assure that such will be accomplished. The Office is without authority to grant a suspension for longer than three months in conjunction with the filing of RCE papers.

The petition to suspend action is <u>GRANTED for a period of three (3) months in accordance with 37 CFR 1.103(c) upon processing of the RCE papers</u>.

(It is noted that the copending reissue application has now been allowed and is undergoing further processing prior to mailing of the notice of Allowability and Notice of Allowance and Issue Fee Due.)

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at the general Office facsimile number 571-273-8300.

George C. Elliott

George C. Elliott
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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MR. S. H. DWORETSKY
AT&T CORP.
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

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AUG 0 9 2005

OFFICE OF PETITIONS

In re Application of	:	
Thomas A. Liebert, et al.	:	
Application No. 09/840,492	:	ON PETITION
Filed: April 23, 2001	:	
Attorney Docket No. 2000-2088	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 1, 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 October 22, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on January 24, 2005.

Petitioner has submitted a change of address with the instant petition, although the address given on the petition differs from the address submitted. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail future correspondence solely to the address of record.

The Power of Attorney and Change of Correspondence Address has been accepted and recorded.

The petition satisfies the requirement of 37 CFR 1.137 (b) in that petitioner has supplied (1) the reply in the form of an Amendment; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

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

The application matter is being referred to Technology Center 2100, Art Unit 2132 for further processing.

Retta Williams

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

cc: Robert T. Canavan
Canavan & Monka LLC
250 State Route 28, Suite 207
Bridgewater, NJ 08807

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Paper No. 12

David and Raymond Patent Group
1050 Oakdale Lane
Arcadia CA 91006

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JUL 16 2003

OFFICE OF PETITIONS

In re Application of
CHING-FANG LIN
Application No. 09/840,511
Filed: April 20, 2001
Attorney Docket No. USP1503A-GNC

DECISION GRANTING PETITION

This is a decision on the communication filed May 22, 2003, which is being treated as a petition under 37 CFR 1.53(e) to request that the above-identified application be accorded a filing date of April 20, 2001, with Figures 1-6 as part of the original disclosure.

On April 20, 2001, applicant filed the above-identified application. On June 14, 2001, the Office of Initial Patent Examination mailed a "Notice to File Missing Parts of a Nonprovisional Application" (Notice), requiring the submission of an executed oath or declaration and a surcharge for its late filing. Additionally, the Notice stated that the application had been accorded a filing date of April 20, 2001, and advised applicant that Figures 5 and 6 appeared to have been omitted.

In response, on May 9, 2003, applicant filed a request for a corrected filing receipt and a copy of Figures 1-6. On May 22, 2003, applicant submitted the present petition and a copy of applicant's postcard receipt acknowledging receipt of 6 sheets of drawings (Figures 1-6) on April 20, 2001. Additionally, applicant submitted a copy of the 6 sheets of drawings.

Upon review of the record, it appears that the 4 drawing sheets in the application file on April 20, 2001, were <u>not</u> intended for the present application. However, the evidence is convincing that the application papers deposited on April 20, 2001, included 6 drawing sheets (Figures 1-6), which were subsequently misplaced in the United States Patent and Trademark Office. Therefore, the application, including 6 drawing sheets, was complete on filing and will be granted a filing date of April 20, 2001.

The present application will be <u>reprocessed</u> with the 6 sheets of drawings submitted on May 9, 2003.

Accordingly, the petition is granted.

The requirement for omitted Figures 5 and 6 set for in the Notice of June 14, 2001, was sent in error and is hereby vacated. Therefore, the $130.00 petition fee will be credited to Deposit Account No. 50-2111.

The application file is being forwarded to the Office of Initial Patent Examination for reprocessing and according the filing date of April 20, 2001, using Figures 1-6 submitted on petition. The Office records should indicate that 6 sheets of drawings were submitted on filing.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 1 0 2003

OFFICE OF PETITIONS

David and Raymond Patent Group
1050 Oakdale Lane
Arcadia CA 91006

Applicant: Lin
Appl. No.: 09/840,511
Filing Date: April 20, 2001
Title: FILTERING PROCESS FOR STABLE AND ACCURATE ESTIMATION
Attorney Docket No.: USP1503A-GNC
Pub. No.: US 2002/0032490 A1
Pub. Date: March 14, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on May 9, 2003, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because published application includes four (4) drawings from another application and is missing applicant's Figures 1-4.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records . . . Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." The request for corrected publication received on May 9, 2003, was not timely filed under 37 CFR 1.221(b).

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: 703-305-8568

The application is being forwarded to the Office of Petitions for consideration of missing drawings which were specified in the Notice To File Missing Parts Of Nonprovisional Application mailed on June 14, 2001.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PATENT COUNSEL
TRW, INC.
LAW DEPARTMENT
ONE SPACE PARK, BUILDING E2/6051
REDONDO BEACH CA 90278

COPY MAILED

NOV 16 2005

OFFICE OF PETITIONS

In re Application of :
Roger S. Tsai :
Application No. 09/840,545 : ON PETITION
Filed: April 23, 2001 :
Attorney Docket No.: 12-1118

This is a decision on the petition filed October 10, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed November 2, 2004. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned February 3, 2005. Accordingly, a Notice of Abandonment was mailed August 25, 2005.

This matter is being referred to Technology Center 2128 for appropriate action on the amendment filed October 10, 2005.

Telephone inquiries concerning this matter 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. 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)).

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

Mail Date: 04/21/2010

Applicant	: Doug Rollins	: DECISION ON REQUEST FOR
Patent Number	: 7605934	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/840,548	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1063** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD, FL 33022-2480

Mail Date: 04/26/2010

Applicant	: Hans-Joachim Schulze	: DECISION ON REQUEST FOR
Patent Number	: 6683328	: RECALCULATION of PATENT
Issue Date	: 01/27/2004	: TERM ADJUSTMENT IN VIEW
Application No	: 09/840,549	: OF WYETH
Filed	: 04/23/2001	:
		:

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.

Approved for use through 04/30/2009. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays 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)
6562573	2003-05-13	09/840,570	2001-04-23	IVGN 530.2 CIP

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 G. Foiles/	Date (YYYY-MM-DD)	2009-02-13
Name	Peter G. Foiles	Registration Number	46477

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. 6562573
Issue Date: May 13,2003
Application No. 09840570
Filed: April 23,2001
Attorney Docket No. PSI-102

:

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

:

This is a decision on the electronic petition, filed February 13,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 13,2009 . 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

Richard L. Byrne
Webb Ziesenheim Logsdon Orkin & Hanson P.C.
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219

COPY MAILED

SEP 17 2002

OFFICE OF PETITIONS

In re Application of	:
Suresh C. Gupta et al	:
Application No. 09/840,572	: DECISION GRANTING
Filed: April 23, 2001	:STATUS UNDER 37 CFR 1.47(a)
Attorney Docket No: 3419-010698	:
	:

This is in response to the petition under 37 CFR 1.47(a), filed July 23, 2001.

The petition is granted.

Petitioner has shown that the nonsigning inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the nonsigning inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

This application is being forwarded to Technology Center AU 2834 for appropriate action on the reply received June 11, 2002.

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

RECEIVED
WEBB, ZIESENHEIM LOGSDON
ORKIN, & HANSON, PC
SEP 20 2002

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

Suresh C. Gupta
3351 Rossmore Way
Los Alamitos, CA 90720

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SEP 17 2002

OFFICE OF PETITIONS

In re Application of
Suresch C. Gupta et al
Application No. 09/840,572
Filed: April 23, 2001
For: ELECTRICAL SYSTEM FOR TURBINE/ALTERNATOR ON COMMON SHAFT

Dear Mr. Gupta:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 in 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-8680. 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 1 (800) 972-6382 (outside the Washington D.C. area).

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

cc:

Richard L. Byrne
Webb Ziesenheim Logsdon Orkin & Hanson P.C.
700 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219

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Louis P. Herzberg
IBM Corporation
Intellectual Property Law Dept.
P.O. Box 218
Yorktown Heights NY 10598

Paper No. 8

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SEP 09 2005

OFFICE OF PETITIONS

In re Application of	:	
HAYMES et al.	:	DECISION
Application No. 09/840,617	:	ON PETITION
Filed: April 23, 2001	:	
Attorney Docket No. YOR91998-167US3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 11, 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 a Notice of Non-Compliant Amendment mailed November 3, 2003, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 4, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an Amendment with all claims mentioned in ascending order, including canceled claims, as required by 37 CFR 1.121(c)(1); (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final action of November 3, 2003 is accepted as having been unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have first hand 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 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 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 Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 2683 for further processing.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Eric Petraske
68 Old Hawleyville Road
Bethel, CT 06801

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RANDALL B. BATEMAN
BATEMAN IP LAW GROUP
8 EAST BROADWAY, SUITE 550
PO BOX 1319
SALT LAKE CITY UT 84110

COPY MAILED

JAN 03 2008

OFFICE OF PETITIONS

In re Application of :
Pope, et al. : DECISION ON PETITION
Application No. 09/840,623 :
Filed: April 22, 2001 :
Docket No.: 6069.1 P :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed September 18, 2007.

This application was held abandoned for failure to timely submit a proper reply to the Office action mailed February 10, 2003. Notice of Abandonment was mailed June 26, 2006.

Petitioners assert that a response to the Office action was timely submitted on March 3, 2003 and have provided as proof of mailing and proof of USPTO receipt a return postcard dated March 3, 2003 acknowledging receipt of the reply. Further, the response bears a certificate of mailing date of February 26, 2003 in accordance with 37 CFR 1.8. Petitioners have established non-receipt of the Notice of Abandonment due to the Office's failure to enter the requested change of correspondence address.

The original response filed March 3, 2003 has not been located in the application file. However, the evidence presented is most persuasive that a reply Office action was in fact timely submitted.

In view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center 3600 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/840,623	04/22/2001	Bill J. Pope	6069.1 P

CONFIRMATION NO. 3960

POA ACCEPTANCE LETTER

OC000000027490131

27472
RANDALL B. BATEMAN
BATEMAN IP LAW GROUP
8 EAST BROADWAY, SUITE 550
PO BOX 1319
SALT LAKE CITY, UT 84110

Date Mailed: 12/31/2007

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/18/2007.

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.

/ambrown/

Office of Initial Patent Examination (571) 272-4000 or 1-800-PTO-9199

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/840,623	04/22/2001	Bill J. Pope	6069.1 P

CONFIRMATION NO. 3960

POWER OF ATTORNEY NOTICE

McCarthy & Sadler, LC
Suite 100
39 Exchange Place
Salt Lake City, UT 84111

OC000000027490130

Date Mailed: 12/31/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/18/2007.

- 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).

/ambrown/

Office of Initial Patent Examination (571) 272-4000 or 1-800-PTO-9199

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.

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

COPY MAILED

JAN 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Brian Fitzpatrick, Ellen Cox,	:	
Maddy Sheprow, Peggy Barton,	:	DECISION ACCORDING STATUS
Frank Munsch, Mark Hanes,	:	UNDER 37 CFR 1.47(a)
Jennie Hei and	:	
Ethan Blumenstrauch	:	
Application No. 09/840,648	:	
Filed: April 23, 2001	:	
Atty Docket No. MRZ 8996.1	:	

This is a decision on the "PETITION UNDER RULE 47(a)," filed September 14, 2001. The petition was recently forwarded to the undersigned for consideration.

The petition is **GRANTED**.

The above-identified application was filed on April 23, 2001, without an executed oath or declaration. Accordingly, on June 15, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing. This Notice set a period for reply of two months from the mailing date of the Notice, with extensions of time obtainable under § 1.136(a).

On September 14, 2001, rule 47 applicants responded with a declaration executed by joint inventors Fitzpatrick, Cox, Sheprow, Barton, Munsch, Hanes and Hei on behalf of themselves and on behalf of non-signing inventor Blumenstrauch; the late surcharge under § 1.16(e); the fee for extension of time for response within the first month; and the instant petition (and petition fee). Rule 47 applicants maintain that status under 37 CFR 1.47 is proper because despite diligent and repeated

contacts with Mr. Blumenstrauch and his attorney by telephone and by written correspondence, inventor Blumenstrauch has been unavailable, unresponsive and has refused to sign the declaration. In support thereof, rule 47 applicants enclosed a declaration of facts of patent attorney Frank Agovino.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

On petition and by declaration of patent attorney Frank Agovino, and supporting documentary evidence, petitioner has shown that inventor Blumenstrauch has refused to join in the application after having been presented with the application papers.

The petition includes a statement of the last known address of inventor Blumenstrauch. The declaration filed September 14, 2001, and the petition have been reviewed and found in compliance with 37 CFR 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), 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.

The application will be examined in Technology Center AU 3622 in due course.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mr. Ethan Blumenstrauch
317 East 75th Street
New York, NY 10021

COPY MAILED

JAN 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Brian Fitzpatrick, Ellen Cox,	:	
Maddy Sheprow, Peggy Barton,	:	LETTER
Frank Munsch, Mark Hanes,	:	
Jennie Hei and	:	
Ethan Blumenstrauch	:	
Application No. 09/840,648	:	
Filed: April 23, 2001	:	
Atty Docket No. MRZ 8996.1	:	

Dear Mr. Blumenstrauch:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 CFR 1.19) or make your 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 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (571) 272-3219. 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 the Certification Division at (571) 272-3150 or 1-800-972-6382 (outside the Washington D.C. area).

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

cc: Sidney Bresnick
Bresnick & Reff
110 East 59th Street
Manhattan, NY 10022

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

MAIL

AUG 2 8 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

William J Kubida
Hogan & Hartson LLP
One Tabor Center
1200 17th Street Suite 1500
Denver, CO 80202

In re Application of	:	
Bishop	:	
Application No. 09/840,663	:	DECISION ON REQUEST TO
Filed: April 23, 2002	:	WITHDRAW AS ATTORNEY
For: DEVICE FOR LIMITING CURRENT IN A SENSOR	:	

This is a decision on the request to withdraw as attorney/agent of record filed on May 11, 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 effective date of withdrawal 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**.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. This address was provided in an Asociate Power of Attorney filed June 3, 2002. 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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Tejpal S. Hansra
3705 Canterbury Lane, #6
Bellingham, WA 98225

UNITED STATES 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. None

HANSRA PATENT SERVICES
4525 GLEN MEADOWS PLACE
BELLINGHAM WA 98226

COPY MAILED

MAR 2 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Andrew Bishop	:	
Application No. 09/840,663	:	
Filed: April 23, 2001	:	DECISION ON PETITION
Attorney Docket No. Q01-1066-US1	:	UNDER 37 C.F.R. §1.181(A)
Title: DEVICE FOR LIMITING CURRENT IN A SENSOR	:	

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on September 30, 2005.

The Office regrets the delay in issuing this decision.

BACKGROUND

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due (notice), mailed March 9, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue fees or publication fees[1]. Accordingly, the above-identified application became abandoned on June 10, 2005.

With the present petition, Petitioner has alleged that the notice of allowability and issue fee due was not received, as it was mailed to the incorrect address.

1 See MPEP §710.02(e).

The electronic file has been reviewed, and it is clear that the communication in question was mailed to an incorrect address.

RELEVANT PORTION OF THE MPEP

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.

ANALYSIS

The showing in the present petition is not sufficient to withdraw the holding of abandonment.

Although Petitioner has established that the Office communication was not sent to the correct address, Petitioner has not established that said communication was not forwarded to the current address and subsequently received. Petitioner has not met the requirements outlined above, in that it does not appear that he has:

- Asserted that he has searched the file jacket;
- Asserted that he has searched the docket records;
- Included a copy of the file jacket, and;
- Included a copy of the docket report.

Therefore, Petitioner has not established non-receipt of the communication, and the petition must be **DISMISSED**.

CONCLUSION

Any reply 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 reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.181." This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[2], hand-delivery[3], or facsimile[4].

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

2 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
3 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
4 (571) 273-8300- please note this is a central facsimile number.

UNITED STATES 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. None

HANSRA PATENT SERVICES
4525 GLEN MEADOWS PLACE
BELLINGHAM WA 98226

COPY MAILED
JUL 3 1 2006
OFFICE OF PETITIONS

In re Application of Andrew Bishop Application No. 09/840,663 Filed: April 23, 2001 Attorney Docket No. Q01-1066-US1 Title: DEVICE FOR LIMITING CURRENT IN A SENSOR	DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.181(A)

This is a decision on the petition under 37 C.F.R. §1.181(a) to withdraw the holding of abandonment, filed on June 16, 2006.

BACKGROUND

The above-identified application became abandoned for failure to submit the issue and publication fees in a timely manner in reply to the Notice of Allowance and Issue Fee Due (notice), mailed March 9, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time are permitted for transmitting issue fees or publication fees[1]. Accordingly, the above-identified application became abandoned on June 10, 2005.

With the original petition, Petitioner alleged that the notice of allowability and issue fee due was not received, as it was mailed to the incorrect address.

1 See MPEP §710.02(e).

RELEVANT PORTION OF THE MPEP

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.

ANALYSIS

The original petition was received on September 30, 2005, and was dismissed via the mailing of a decision on March 30, 2006.

The original petition set forth that the Petitioner established that the Office communication was not sent to the correct address, but that Petitioner had failed to assert that he had searched the file jacket and the docket record, and that he had failed to provide copies of each of these items.

With this renewed petition, these deficiencies have been corrected. It is noted that Petitioner has submitted a one-month extension of time to make timely this response.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will mail a new Notice of Allowance and Issue Fee Due, as well as a copy of the Notice of Allowability. The three-month non-extendable time period for paying the issue and publication fees will be set to run from the mailing date of the Notice.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225[2]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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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INTELLECTUAL PROPERTY DEPT./ MAIL STOP NRW-097
7801 COMPUTER AVENUE SOUTH
BLOOMINGTON MN 55435

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SEP 27 2007

OFFICE OF PETITIONS

In re Application of :
Andrew Bishop :
Application No. 09/840,663 : DECISION ON PETITION
Filed: April 23, 2001 :
Attorney Docket No. :
STL6974.00 Q01-1066-US1

This is a decision on the petition under 37 CFR 1.137(b), filed July 31, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before June 27, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed March 27, 2007. Accordingly, the date of abandonment of this application is June 28, 2007. A Notice of Abandonment was mailed on July 23, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1,400 and the publication fee of $300, (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has

not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

It is noted that, on March 27, 2007, a notice of acceptance of the power of attorney to Seagate Technology LLC and a notice of acceptance of the withdrawal of the attorney to Hansra Patent Services were mailed. However, the acceptance of the power of attorney to Seagate was improper since no power of attorney was submitted for Seagate. Accordingly, the proper power of attorney documents must be submitted if Seagate wishes to continue to receive correspondence regarding this file.

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

This application is being referred to Publishing Division for appropriate processing in accordance with this decision on petition.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Randall Aaron Morton
29881 Weatherwood
Laguna Niquel, CA 92677-1945

COPY MAILED

APR 29 2005

OFFICE OF PETITIONS

In re Application of	:	
Randall A. Morton	:	
Application No. 09/840,677	:	ON PETITION
Filed: April 23, 2001	:	
Attorney Docket No. N/A	:	

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

The petition is **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 11/079,156.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37 CFR 1.34(a), the signature of Matthew A. Newboles appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. A courtesy copy of this decision is being mailed to petitioner.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being referred to the Files Repository.

Marianne E. Jenkins

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

cc: Stetina Brunda Garred & Brucke
75 Enterprise, Suite 250
Aliso Viejo, CA 92656

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Paper No. 7

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2101 NASA RD 1
HOUSTON, TX 77058

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DEC 2 4 2003

OFFICE OF PETITIONS

In re Application of :
Robert L. Shuler Jr. :
Application No. 09/840,683 : ON PETITION
Filed: April 20, 2001 :
Attorney Docket No. MSC-22953-3 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 8, 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 Restriction Requirement mailed December 4, 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 application became abandoned on March 5, 2002.

The application file is being forwarded to Technology Center 2800, Art Unit 2816 for further processing.

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

Retta Williams

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

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

MAIL

JAN 2 5 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Luosheng Peng)
Application No.: 09/840,736)
Filed: April 23, 2001)
For: APPARATUS AND METHODS FOR)
INTELLIGENTLY CACHING)
APPLICATIONS DATA ON A)
MOBILE DEVICE)

DECISION ON REQUESTS FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Requests To Withdraw from Representation filed November 30, 2001 and January 23, 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 effective date of withdrawal 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 filed January 23, 2002 meets all the requirements. Accordingly the request is **GRANTED**. This filing supersedes the request dated November 30, 2001 which is **DISMISSED** as **MOOT**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

MAIL

JAN 0 3 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Luosheng Peng	)	
Application No.: 09/840,739	)	
Filed: April 23, 2001	)	**DECISION ON REQUEST FOR**
For: APPARATUS AND METHODS FOR	)	**WITHDRAWAL AS ATTORNEY**
MANAGING CACHES ON A	)	
GATEWAY	)	

This is a decision on the Request To Withdraw from Representation filed December 6, 2001.

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 withdrawal 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**.

Because no request was made for a change in correspondence address, all future communications from the Office will ***continue to be directed to the above-listed address*** until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

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. 6

Thomas E. Friebel
PENNIE & EDMONDS, LLP
1155 Avenue of the Americas
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MAIL

MAY 0 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Luosheng Peng)
Application No. 09/840,739)
Filed: April 23, 2001) **DECISION ON REQUEST FOR**
For: AND METHODS FOR APPARATUS) **WITHDRAWAL AS ATTORNEY**
FOR MANAGING CACHES ON A)
GATEWAY

This is a decision on the Request To Withdraw from Representation filed January 10, 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 effective date of withdrawal 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 filed January 10, 2002 meets all the requirements. According the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software,
and Electronic Commerce
(703) 305-9750

cc: Mr. Steven Artim, CEO
DoOnGo Technologies, Inc.
2065 Martin Avenue
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Santa Clara, CA 95050

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

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH , NC 27627

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SEP 2 0 2001

OFFICE OF PETITIONS

In re Application of	:	
Don Witmer, et al	:	
Application No. 09/840,742	:	DECISION GRANTING PETITION
Filed: May 25, 2001	:	
Attorney Docket No. 9204-13	:	

This is a decision on the petition filed July 27, 2001, under 37 CFR 1.10(c) requesting that the above-cited application be accorded a filing date of April 23, 2001, rather than the presently accorded filing date of April 25, 2001.

Petitioner alleges that the application was retrieved and accepted by the Express Mail pick-up service on April 23, 2001. In support, the petition is accompanied by a copy of the "Pickup Service Statement for Express Mail, Priority Mail, or Parcel Post" showing a receipt number of EL733093865US (the same Express Mail number found on the original application papers located in the file) showing a "date in" of April 23, 2001.

In view of the above, the petition is granted. A corrected filing receipt is enclosed showing the filing date for the application as April 23, 2001. The petition fee of $130.00 will refunded in due course.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of April 23, 2001.

Any inquiries related to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703)305-0010

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

Enclosure: Corrected Filing Receipt

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Paper No. 21

TOWNSEND AND TOWNSEND AND CREW, LLP
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MAY 1 9 2004

OFFICE OF PETITIONS

In re Application of Howard Sachs Application No. 09/840,747 Filed: April 23, 2001 Attorney Docket No.: 02111100010 Title: CIRCUIT GROUP DESIGN METHODOLOGIES	: : : : : : :	DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the renewed petition filed May 5, 2004, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

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 March 28, 2003, which set a shortened statutory period for reply of three (3) months. On October 14, 2003, the Examiner telephoned counsel to inquire as to whether a response had been filed, as none had been received[2]. Counsel advised the Examiner of the after-final amendment, and submitted a duplicate copy via facsimile transmission. The amendment was considered, and it was not determined the place the application in condition for allowance. As such, both an advisory action and a Notice of Abandonment were mailed to counsel on October 23, 2003.

---

1 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.

2 With the instant petition, petitioner has included a copy of the PTO generated "Auto-Reply Facsimile Transmission (Auto-Reply)," which shows that an after-final amendment was transmitted via facsimile transmission on August 20, 2003, coupled with a two-month extension to make timely this response.

On November 24, 2003, the original petition was submitted, along with a Request for Continued Examination (RCE), the associated fee, the proper statement of unintentional delay, and instructions to charge the petition fee to petitioner's Deposit Account. Unfortunately, Petitioner failed to establish that the entire delay was unavoidable, and this petition was dismissed via the mailing of a decision on January 7, 2004.

Petitioner filed a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, including a request for consideration of a concurrently submitted amendment and payment of the RCE fee. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). Having made the proper statement of unintentional delay and having submitted the petition fee, an amendment, and a two-month extension of time to make timely this reply, petitioner has met all other requirements for a grantable petition under 37 C.F.R. §1.137(b).

The application file is being forwarded to Technology Center 2800 for consideration of the submission under 37 C.F.R. §1.114, the amendment filed concurrently with the renewed petition on May 5, 2004.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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Paper No. 19

TOWNSEND AND TOWNSEND AND CREW, LLP
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OFFICE OF PETITIONS

In re Application of
Howard Sachs
Application No. 09/840,747
Filed: April 23, 2001
Attorney Docket No.: 02111100010
Title: CIRCUIT GROUP DESIGN METHODOLOGIES

DECISION ON PETITION

This is a decision on the petition filed on November 24, 2003, pursuant to 37 C.F.R. §1.137(a)[1], to revive the above-identified application.

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 March 28, 2003, which set a shortened statutory period for reply of three (3) months. On October 14, 2003, the Examiner telephoned counsel to inquire as to whether a response had been filed, as none had been received[2]. Counsel advised the Examiner of the after-final amendment, and submitted a duplicate copy via facsimile transmission. The amendment was considered, and it was not determined the place the application in condition for allowance. As such, both an advisory action and a Notice of Abandonment were mailed to counsel on October 23, 2003.

On November 24, petitioner filed the instant petition. Petitioner has included the petition

1 A grantable petition pursuant to 37 CFR §1.137(a) must be accompanied by:

(1) the required reply (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;
(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) a terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to paragraph (d) of this section.

2 With the instant petition, petitioner has included a copy of the PTO generated "Auto-Reply Facsimile Transmission (Auto-Reply)," which shows that an after-final amendment was transmitted via facsimile transmission on August 20, 2003, coupled with a two-month extension to make timely this response.

fee, a Request for Continued Examination (RCE) along with the associated fee, a copy of the auto-reply, a copy of the after-final amendment, and what appears to be a print-out of a webpage.

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]

---

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].

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[12].

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account[13]."

A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable[14]."

---

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 In re Mattullath, 38 App. D.C. at (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).

13 Smith v. Mossinghoff, 671 F.2d at 538; 213 USPQ at 982.

14 Haines, 673 F. Supp. at 314, 316-17; 5 USPQ2d at 1131-32.

The rule and portion of the MPEP relevant to the abandonment of this application

§ 1.116 Amendments after final action or appeal.
(a) An amendment after final action or appeal must comply with § 1.114 or this section.
(b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§1.949) in an inter partes reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. No amendment can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (d) of this section.
(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

[24 FR 10332, Dec. 22, 1959; 46 FR 29183, May 29, 1981; para. (a) revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; revised, 65 FR 14865, Mar. 20, 2000, effective May 29, 2000 (adopted as final, 65 FR 50092, Aug. 16, 2000); paras. (b) and (d) revised, 65 FR 76756, Dec. 7, 2000, effective Feb. 5, 2001]

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 the facsimile transmission was received in the Office, and misplaced before the Examiner had an opportunity to review it.

However, the after-final amendment was later considered by the Examiner, and was not deemed to place the application in condition for allowance.

It is clear from rule 37 C.F.R. §1.116 that abandonment of an application is risked when the applicant proffers an amendment after the mailing of a final Office action. The rule clearly indicates that the mere filing of an amendment does not relieve applicant of the duty to take appropriate action to save the application from abandonment.

If steps are not taken after final to maintain pendency prior to the expiration of the maximum extendable period for reply, the application will go abandoned. Put another way, the submission of an after final amendment which fails to place the application in condition for allowance will result in the abandonment of the application, unless one of the following four items is filed prior to the maximum extendable period for reply:

- a subsequent amendment which places the application in condition for allowance:
- a Notice of Appeal:
- a Request for a Continuation Application pursuant to 37 C.F.R. § 1.53(b), if applicable:
- a Request for Continued Examination pursuant to 37 C.F.R. §1.114, and;
- a Terminal Disclaimer, if applicable.

By filing the after-final amendment, Petitioner clearly risked the abandonment of this application. The amendment was considered by the Examiner prior to the mailing of the Notice of Abandonment, and as such, the abandonment cannot be characterized as "unavoidable."

Consequently, the petition is **DISMISSED**.

The reply to this letter may be submitted by mail[15], hand-delivery[16], or facsimile[17].

Alternate venue

Petitioner may also wish to consider filing a petition under the unintentional standard, 37 CFR §1.137(b)[18]. Petitioner should be made aware that although the surcharge is significantly higher, the standard associated with a petition filed under this section is far less stringent than the standard associated with a delay asserted to be "unavoidable". A form for this petition may be located at http://www.uspto.gov/web/forms/sb0064.pdf.

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

15 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
16 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
17 (703) 872-9306, attention Office of Petitions, Attorney Paul Shanoski.
18 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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

JOHN S. PRATT
KILPATRICK STOCKTON LLP (KIMBERLY CLARK)
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SUITE 2800
ATLANTA, GA 30309

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MAR 1 0 2003

OFFICE OF PETITIONS

In re Application of
Topolkaraev et al.
Application No. 09/840,755
Filed: April 23, 2001
Attorney Docket No. 11302-1130

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 13, 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 to File Corrected Application Papers (Notice) mailed June 15, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 16, 2001. A Notice of Abandonment was mailed on December 4, 2002.

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 the Office of Initial Patent Examination.

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
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1300 East Ninth Street
Suite 1700
Cleveland, OH 44114

Mail Date: 04/30/2010

Applicant	: J. Graham Mobley	: DECISION ON REQUEST FOR
Patent Number	: 7614074	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 09/840,767	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/23/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1215** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

Unit d Stat s Patent and Trademark Offic

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

Paper No. 16

ROBERT M. SCHULMAN, ESQ.
HUNTON & WILLIAMS
SUITE 1200
1900 K STREET, N.W.
WASHINGTON, DC 20006

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MAY 1 4 2003

OFFICE OF PETITIONS

In re Application of
Daniel Dupret et al
Application No. 09/840,861
Filed: April 25, 2001
Attorney Docket No. 58763.000013

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3)
: AND UNDER 37 CFR 1.55(c)

This is a decision on the petition under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c), filed December 24, 2002, and supplemented by facsimile transmission on April 18, 2003 and on May 8, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a prior-filed nonprovisional and PCT application, and under 35 U.S.C. § 119 for the benefit of a prior-filed foreign application.

The petitions are **GRANTED**.

As to the benefit claim under 37 CFR 1.78(a)(3):

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

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

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[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must

> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on April 25, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. §§ 120 and 365(c). Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the prior-filed applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

As to the benefit claim under 37 CFR 1.55(c):

A petition for acceptance of a claim for foreign priority under 37 CFR 1.55(c) is only applicable to those applications filed on or after November 29, 2000. Further, the nonprovisional application must be filed within 12 months of the filing date of the foreign application. In addition, a petition under 37 CFR 1.55(c) to

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contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) must be accompanied by:

> **(1)** the claim under 35 U.S.C. §119(a)-(d) to the prior foreign application, unless previously submitted;[2]
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought; within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on April 25, 2001, which is after November 29, 2000 and intermediate prior-filed PCT Application No. PCT/FR99/01973 was filed on August 11, 1999, within 12 months of foreign Application No. 98/10338, filed August 12, 1998 (the filing date of the foreign application to which benefit is now being claimed). On May 8, 2003, an application data sheet was received which identifies the foreign application for which priority is claimed by application number, country and filing date. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a) through (d) is granted.

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[2] The claim must identify in the oath or declaration the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country, and the filing date. *Note* also 37 CFR 1.63(c)(2).

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

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1637 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to prior-filed nonprovisional Application No. 09/723,316, filed November 28, 2000, and PCT Application No. PCT/FR99/01973, filed August 11, 1999, and for consideration of the foreign priority claim under 35 U.S.C. § 119 for the benefit of Foreign Application No. 98/10338, filed August 12, 1998.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

7+

Paper No.: _____

DATE : January 3, 2007

TO SPE OF : ART UNIT 2626

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/840886 Patent No.: 7,054,812 B2

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**.

Elisha Evans

Certificates of Correction Branch

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: _____

_____

_____

_____

_____

Peter N. Edouard — **SPE**

2626 — **Art Unit**

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Pet. Der.

Commissioner for Patents
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Mailed: 3/14/05

dss
Paper Number

In re application of
Yoshifumi Takeyama et al.
Serial No. 09/840,893
Filed: April 25, 2001
For: NON-CONTACT TREATMENT METHOD

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a), filed March 26, 2004 and resubmitted July 01, 2004 . The petition requests that the abandonment, as set forth in the Notice of Abandonment of March 15, 2004, for failure to timely file a proper reply to the Office letter mailed July 16, 2003 be withdrawn since the applicants did timely file a reply on October 16, 2003. (A copy of the reply is attached to the instant petition as well as a copy of the USPTO date stamped postcard receipt.)

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 reply was properly filed on October 16, 2003 as evidenced by the copy of the USPTO date stamped return receipt postcard indicating receipt of the reply at the USPTO on October 16, 2003. Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed July 16, 2003 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry, processing and consideration of the reply originally filed October 16, 2003.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Fitzpatrick, Cella, Harper, & Scinto
30 Rockefeller Plaza
New York, New York 10112-3801

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Paper No.

FITZPATRICK CELLA
HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

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OCT 3 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Takeyama et al.	:	
Application No. 09/840,893	:	DECISION ON APPLICATION
Filed: April 25, 2001	:	FOR
Atty Docket No. 35.C13231 D2	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed June 9, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to eight hundred fifteen (815) 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 eight hundred fifteen (815) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 20, 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 0 days. On June 9, 2005, applicants timely submitted an application for patent term adjustment (with required fee)[1]. Applicants dispute the entry of a period of

[1] PALM records indicate that the Issue Fee payment was also received on June 9, 2005.

reduction of 515 days for applicants taking in excess of three months to respond to the non-final rejection mailed July 16, 2003. Applicants submit evidence to show that the holding of abandonment for failure to timely respond to the Office action was withdrawn based on their showing that a response had been timely filed on October 16, 2003. Furthermore, applicants assert entitlement to a period of adjustment of 429 days on the basis that the Office failed to respond within four months to the response filed October 16, 2003.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that no response to the Office action mailed July 16, 2003 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed March 15, 2004. In response, on March 26, 2004 (and resubmitted on July 1, 2004), applicants filed a petition to withdraw the holding of abandonment. It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed March 14, 2005, the petition was granted on the basis that applicants had shown that a proper response was filed on October 16, 2003.

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Office action by 515 days. The response was filed within the three-month period under 37 CFR 1.704(b). Thus, no reduction was warranted.

Moreover, applicants are correct that given the showing of receipt of applicants' response in the Office on October 16, 2003, the application is entitled to a period of adjustment for Office delay. The Office did not take action in response until April 20, 2005. Pursuant to § 1.702(a)(2) and § 1.703(a)(2), the period of adjustment is 429 days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed, February 17, 2004 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, April 20, 2005.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is eight hundred fifteen (815) days.

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

The application is being forwarded to the Office of Patent Publication so that a patent can be issued. The Issued Patent will include any period of adjustment accrued for Office failure to issue the patent within four months of the date of payment of the issue fee and satisfaction of all outstanding requirements.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kery A Fries for

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

Enclosure: Copy of Revised PAIR Screen

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Paper No. 8

McDERMOTT WILL & EMERY
600 13TH STREET NW
WASHINGTON DC 20005-3096

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APR 16 2002

OFFICE OF PETITIONS

In re Application of
David A. Jackson et al
Application No. 09/840,924
Filed: April 25, 2001
Attorney Docket No. 10473-670

DECISION DISMISSING PETITION
UNDER 37 CFR 1.137(f)

This is a decision on the petition filed March 29, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **dismissed**.

A request for reconsideration of this decision must be filed within TWO MONTHS from the mail date of this decision. Extensions of time pursuant to the provisions of 37 CFR 1.136(a) are available.

Petitioner states that, on April 25, 2001, a foreign application was filed corresponding to the above-identified application; however, applicants unintentionally failed to file a request to rescind the previously filed nonpublication request within the 45 day period following the filing thereof.

A petition under 37 CFR 1.137(f) must be accompanied by: (1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;[1] (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

---

[1] The filing of a petition under this section will not relieve applicant of his obligation to reply to any outstanding Office action.

The Commissioner may require additional information where there is a question whether the delay was unintentional.

The record discloses that, on April 25, 2001, the date of filing of the instant application, a Request and Certification under 35 USC 122(b)(2)(B)(i) was filed certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at 18 months after filing."

Petitioner now requests that this application be revived as having been unintentionally abandoned for failure to notify the Office within 45 days of the filing of a foreign or international application, which foreign application was filed on April 25, 2001.

35 USC 122((b)(2)(B)(iii) states:

> An applicant who has made a request under clause (i) but who **subsequently files, in a foreign country or under a multilateral international agreement** specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days **after the date of the filing of such foreign or international application**. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional [emphasis supplied].

The facts of this case are that the subject application was filed on April 25, 2001 and the foreign or international application was also filed on April 25, 2001. The statute does not provide for the situation where a certification under 35 USC 122(b)(2)(B)(i) was made on the same date, despite the fact that an application was filed in another country or under the multilateral international agreement. In view of petitioner's statement that the foreign

application was filed on April 25, 2001, the same date as the filing of the subject application, the filing of the foreign application cannot be considered to have been filed **subsequent** to the filing of the subject application in the United States. The statute at 35 USC 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 USC 122(b)(2)(B)(i) at the time of filing the application and an application was **subsequently** filed in a foreign country without notifying the Office within 45 days of the filing thereof.

Since the foreign or international application was either filed on the same date or filed prior to the filing date (this would be true if the foreign or international application has a filing date of April 25, 2001) as the subject application, this application did not become abandoned pursuant to the provisions of 35 USC 122(b)(2)(B)(iii). Therefore, a petition to revive pursuant to the provisions of 37 CFR 1.137(f) is inappropriate and, consequently, must be dismissed.

The previously filed nonpublication request has been rescinded. A corrected filing receipt which reflects the projected publication date of July 25, 2002 accompanies this decision on petition.

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. 35 USC 41(c)(7). Accordingly, the $1,280 petition fee submitted was due at the time of payment thereof and is not refundable.

This application is being forwarded to Technology Center 3600, Art Unit 3661, for examination in due course.

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

By mail: U.S. Patent and Trademark Office
P.O. Box 2327
Mail Stop DAC
Arlington, VA 22202

OR

Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Any questions concerning this matter may be directed to the undersigned at (703) 305-8680.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. **10**

McDERMOTT WILL & EMERY
600 13TH STREET NW
WASHINGTON DC 20005-3096

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JUL 1 0 2002

OFFICE OF PETITIONS

In re Application of David A. Jackson et al Application No. 09/840,924 Filed: April 25, 2001 Attorney Docket No. 10473-670	DECISION GRANTING PETITION UNDER 37 CFR 1.137(f)

This is a decision on the renewed petition, filed June 24, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner now states that, "[u]pon a recent review of the above file in view of the Decision [decision mailed April 16, 2002], Applicants have become aware of a second foreign application that was subsequently filed on June 28, 2001." However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of a "second" application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a "second" foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 3661 for examination in due course.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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CARR & FERRELL LLP
2200 GENG ROAD
PALO ALTO CA 94303

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OFFICE OF PETITIONS

In re Application of	:	
KENNEDY, Paul	:	
Application No. 09/841,008	:	DECISION ON PETITION
Filed: April 25, 2001	:	TO WITHDRAW
Attorney Docket No. **PA3997US**	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed December 10, 2007.

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 Daniel Kloke on behalf of all attorneys of record who are associated. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **PAUL KENNEDY**
1237 OAK STREET
SAN MATEO, CA 95129

cc: **JONATHAN HARRIS**
JPMORGAN CHASE TOWER
600 TRAVIS ST. SUITE 7100
HOUSTON, TX 77002-2912

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MAIER & NEUSTADT PC
1940 DUKE STREET
ALEXANDRIA, VA 22314

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JUL 18 2006

OFFICE OF PETITIONS

In re Application of :
Katsumi Yamato et al :
Application No. 09/841,042 : DECISION ON PETITION
Filed: April 25, 2001 :
Attorney Docket No. 206502US2RD :

This is a decision on the petition under 37 CFR 1.181 (no fee), filed March 9, 2005,[1] requesting that the holding of abandonment in the above-identified application be withdrawn.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before November 1, 2004, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed July 30, 2004.

Petitioner asserts that the failure to timely reply was caused by nonreceipt of the Notice dated July 30, 2004.

A review of the written record indicates that the Notice of July 30, 2004 was returned to the Office for reasons unknown, since it was properly addressed. Further, there is no indication that the Office ever attempted to re-mail the returned Notice. Therefore, it is clear from the official record for this file that petitioner did not in fact receive the Notice of July 30, 2004.

In view of the above, this application was not abandoned in fact. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

This application is being referred to the Technology Center AU 2617 technical support staff for **re-mailing** the Notice of Allowability and the Notice of Allowance and Fee(s) Due of July 30, 2004. The period for paying the issue and publication fees will be reset to expire three (3) months from the date the Notices are re-mailed. This period is not extendable under the provisions of 37 CFR 1.136. The Examiner should also take appropriate action on the Information Disclosure Statement received October 29, 2004.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] The petition was only recently brought to the undersigned's attention. The Office sincerely apologizes for the delay in replying to this petition and any inconvenience caused petitioner by this delay.

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DEL CHRISTENSEN
SHELL OIL COMPANY
P O BOX 2463
HOUSTON, TX 77252-2463

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AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of
Ilya Emil Berchenko et al
Application No. 09/841,061
Filed: April 24, 2001
Attorney Docket No. 5659-06300/EBM

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

This is a decision on the petition, filed August 20, 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 June 14, 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 3673 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

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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).

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BOX SEQ

OIPE JC177
MAY 2 9 2002
PATENT & TRADEMARK OFFICE

Atty. Docket No. P66602US0

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of NISHIGAKI, Koichi

Serial No.: 09/841,157

Filed: April 25 2001

For: METHODS OF IDENTIFYING ORGANISM BASED ON ITS GENOTYPE

TRANSMITTAL

Commissioner of Patents
Washington, D.C. 20231

Sir:

Transmitted herewith are Response to Notice to Comply mailed November 29, 2001, including copy of the Notice to Comply, Sequence Listing on paper and in computer readable form (CRF), and Amendment entering the Sequence Listing into the record, and Petition for extension of time.

XX A check in the amount of $1440.00 is attached for: petition for extension of time.

XX If a Petition for Extension of Time is necessary and the Petition and/or the check is not enclosed, this will act as the Petition and applicant herewith petitions the Commissioner to extend the time for response and charge any fees necessary under 37 CFR 1.17 (a)-(d) to Deposit Account No. 06-1358. The Commissioner is also authorized to charge payment of any other additional fees associated with this communication or credit any overpayment to Deposit Account No. 06-1358.

Respectfully submitted,

JACOBSON HOLMAN PLLC

By: William E. Player
William E. Player
Registration No. 31,409

400 Seventh Street, N.W.
Washington, D.C. 20004
Telephone: (202) 638-6666
Atty. Docket No.: P66602US0
Date: May 29, 2002
WEP:rdt
R:\HOME\rthomas\2002\May\P66602trn.wpd

OIPE JC177
MAY 2 9 2002
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/841,157	04/25/2001	Koichi Nishigaki	P66602US0

CONFIRMATION NO. 4171

FORMALITIES LETTER

OC000000007137073

00136
JACOBSON HOLMAN PLLC
400 SEVENTH STREET N.W.
SUITE 600
WASHINGTON, DC 20004

Date Mailed: 11/29/2001

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

Applicant is given **TWO MONTHS FROM THE DATE OF THIS NOTICE** within which to file the items indicated below to avoid abandonment. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing." Applicant must provide a substitute computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d).

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase PatentIn Software, call (703) 306-2600**
- **For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov**

A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

R

PE JC181 AUG 2 7 2001 PATENT & TRADEMARK OFFICE

Section $

Atty. Docket No. P66602US0 Box Seq

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of NISHIGAKI, Koichi

Serial No.: 09/841,157

Filed: April 25 2001

For: METHODS OF IDENTIFYING ORGANISM BASED ON ITS GENOTYPE

TRANSMITTAL OF RESPONSE TO MISSING PARTS NOTICE

Assistant Commissioner of Patents
Washington, D.C. 20231

Sir:

Transmitted herewith is a response to the Notice to File Missing Parts, mailed June 25, 2001, a copy of which Notice is attached hereto, which response includes declaration/power of attorney, Response to Missing Parts Notice in Compliance with Sequence Rules, and Sequence Listing on paper and in computer readable form (i.e., on computer diskette).

XX A check in the amount of $840.00 is attached for: filing fee and late payment surcharge.

XX If a Petition for Extension of Time is necessary and the Petition and/or the check is not enclosed, this will act as the Petition and applicant herewith petitions the Commissioner to extend the time for response and charge any fees necessary under 37 CFR 1.17 (a)-(d) to Deposit Account No. 06-1358. The Commissioner is also authorized to charge payment of any other additional fees associated with this communication or credit any overpayment to Deposit Account No. 06-1358.

Respectfully submitted,

JACOBSON HOLMAN PLLC

By William E. Player

William E. Player
Registration No. 31,409

400 Seventh Street, N.W.
Washington, D.C. 20004
Telephone: (202) 638-6666
Atty. Docket No.: P66602US0
Date: August 27, 2001
WEP:id

R:\HOME\VBYERS\2001\August\P66061trn.wpd

#3

OIPE JC101
AUG 2 7 2001
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/841,157	04/25/2001	Koichi Nishigaki	P66602US0

CONFIRMATION NO. 4171

FORMALITIES LETTER

OC000000006223179

JACOBSON, PRICE, HOLMAN & STERN
PROFESSIONAL LIMITED LIABILITY COMPANY
THE JENIFER BUILDING
400 SEVENTH STREET, N.W.
WASHINGTON, DC 20004

Date Mailed: 06/25/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

08/29/2001 AWONDAF1 00000033 09841157

01 FC:101 710.00 OP
02 FC:105 130.00 OP

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
  Applicant must submit $ **710** *to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).*
- The oath or declaration is missing.
  A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is $ 840.**

- This application does not contain a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821 (g), 1.825(b), or 1.825(d). Applicant must provide such statement. If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000).
- A copy of the "Sequence Listing" in computer readable form has not been submitted as required by 37 C.F.R. 1.821(e). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825 (b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with

that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase PatentIn Software, call (703) 306-2600**
- **For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov**

A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

UNITED STATES 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.

DEL CHRISTENSEN
SHELL OIL COMPANY
P.O. BOX 2463
HOUSTON, TX 77252-2463

COPY MAILED

JUL 2 5 2003

OFFICE OF PETITIONS

In re Application of
Eric Pierre De Rouffignac et al
Application No. 09/841,195
Filed: April 24, 2001
Attorney Docket No. 5659-07100/EBM

ON PETITION

This is a decision on the petition, filed July 21, 2003, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 30, 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 Irvin Dingle at (703) 306-5684.

After receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 3672 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MERCHANT & GOULD (MICROSOFT)
P.O. BOX 2903
MINNEAPOLIS MN 55402-0903

COPY MAILED

DEC 0 2 2009

OFFICE OF PETITIONS

In re Application of Jeff Reynar. Application No. 09/841,265 Filed: April 24, 2001 Attorney Docket No. 60001.0049US01/154685.01	: : : : :	DECISION GRANTING PETITION UNDER 37 CFR 1.313(c)(2)

This is a decision on the petition under 37 CFR 1.313(c)(2), filed November 27, 2009, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is not signed by an attorney of record. Nevertheless, in accordance with 37 CFR 1.34, the signature of Mr. Ken Stiler appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts. If Mr. Stiler desires to receive future correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on October 21, 2009 cannot be refunded. If, however, this application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries regarding this decision should be directed to undersigned at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

---

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

This application is being referred to Technology Center AU 2115 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed information disclosure statement.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Charles G. Call
68 Horse Pond Road
West Yarmouth, MA 02673-2516

COPY MAILED

FEB 1 1 2005

OFFICE OF PETITIONS

In re Application of	:	
John L. Janosik, Jr., et al.	:	
Application No. 09/841,280	:	ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. A-008	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 4, 2005, to revive the above-identified application.

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being referred to Technology Center 2100.

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

BECK & THOMAS, P.C.
SUITE 100, 1575 McFARLAND ROAD
PITTSBURGH, PA 15216-1808
TELEPHONE (412) 343-9700
FAX (412) 343-5787

RECEIVED
CENTRAL FAX CENTER
DEC 1 9 2007

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

-Fax Cover Sheet-

Date: December 19, 2007

Fax Phone: (571) 273-8300

To: Assignment Branch, Attn: Alicia

From: Emily E. Scattaregia, Legal Assistant

Pages: 7 (including cover sheet)

Subject: **Request for Correction of Assignee**
Patent No. 6,746,060; Serial No. 09/841,281
B&T Ref. No. 010021

Dear Alicia:

This is further to our telephone conversation on December 14, 2007 regarding the Request for Correction of Assignee which we filed via Express Mail on September 12, 2007. Our submission does not appear in the Image File Wrapper in Private PAIR on the U.S. Patent and Trademark Office website and you confirmed that the Patent Office has no record of our submission in the file. Pursuant to your instructions, we are resubmitting our request via facsimile. Immediately following this cover page are copies of all documents enclosed with the filing of the Request for Corrected Assignee, including the stamped Express Mail label, stamped return receipt postcard (stamped by the Patent Office on September 12, 2007) and check no. 868 in the amount of $230.00 for payment of the correction of the Assignee and Certificate of Correction fees.

Thank you for your assistance in this matter. Please call me at (412) 343-9700 if you have any questions.

Sincerely,
Emily E. Scattaregia
Legal Assistant

IF YOU DO NOT RECEIVE THE DESIGNATED NUMBER OF PAGES, OR IF YOU EXPERIENCE ANY PROBLEM WITH THE TRANSMISSION OF THIS DOCUMENT, PLEASE CALL (412) 343-9700.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	
Alfred L. Langtry	:	**Tubular Latch Assembly**
	:	**for Exit Devices and Locks**
Patent No. 6,746,060	:	
	:	
Issue Date: June 8, 2004	:	Attorney Docket No. 010021

LETTER REQUESTING CORRECTION OF ASSIGNEE
UNDER 37 CFR 3.81(b)

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

September 12, 2007

Applicant requests correction of the Assignee under 37 CFR 3.81(b).

The failure to include the correct assignee on the Fee Transmittal PTOL-85B was inadvertent. Enclosed is a copy of the Notice of Recordation of Assignment Document. Please note that the Assignment was submitted on April 20, 2001 and recorded on April 24, 2001. The Assignee name printed on the patent should read "Alfred L. Langtry".

Also enclosed is the Certificate of Correction for correction of the Assignee name.

Applicant is enclosing check number 0868 in the amount of $230 for correction of the Assignee and Certificate of Correction fees.

If our Request for correction of Assignee is granted, please forward the file to Certificates of Correction Branch for issuance of a Certificate of Correction.

Respectfully submitted,

John C. Thomas III / 9-12-07

John C. Thomas, III
Registration No. 52,282
Beck & Thomas, P.C.
1575 McFarland Road, Suite 100
Pittsburgh, PA 15216-1808
Telephone (412) 343-9700
Fax (412) 343-5787

I hereby certify that the correspondence is being deposited with the United States Postal Service as Express Mail No. ED 875286961 US in an envelope addressed to: Commissioner for Patents; P. O. Box 1450; Alexandria, VA 22313-1450.

9/12/07 Amy J. Finzell
Date/Signature, Beck & Thomas, P.C.

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

JULY 24, 2001

PTAS

101709082A

PAUL A. BECK
SUITE 100
1575 MCFARLAND ROAD
PITTSBURGH, PA 15216

UNITED STATES PATENT AND TRADEMARK OFFICE
NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 04/24/2001

REEL/FRAME: 011772/0012
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:
O'BRIEN II, JAMES A.

DOC DATE: 04/20/2001

ASSIGNEE:
ALFRED L. LANGTRY
418 MANORDALE ROAD
PITTSBURGH, PENNSYLVANIA 15241

SERIAL NUMBER: 09841281
PATENT NUMBER:

FILING DATE: 04/24/2001
ISSUE DATE:

SHARON BROOKS, EXAMINER
ASSIGNMENT DIVISION
OFFICE OF PUBLIC RECORDS

PTO/SB/44 (09-07)
Approved for use through 08/31/2010. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 6,746,060

APPLICATION NO.: 09/841,281

ISSUE DATE : 5/20/2004

INVENTOR(S) : James A. O'Brien II

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:

Cover page, Assignee name cancel "Ervos, Inc." and insert -Alfred L. Langtry--

MAILING ADDRESS OF SENDER (Please do not use customer number below):

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.

Beck & Thomas, P.C.
1575 McFarland Road, Suite 100
Pittsburgh, PA 15216
412.343.9700

NATIONAL C ANK
PITTSBURGH, 15212
8-12/430

0868

09/12/2007

PAY TO THE ORDER OF Commissioner for Patents $ **230.00

Two Hundred Thirty and 00/100********** DOLLARS

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

MEMO Request for Certificate of Correction

John C. Thomas III

⑈000868⑈ ⑆043000122⑆ 9837633422⑈

Beck & Thomas, P.C. 0868

Commissioner for Patents		09/12/2007	
Costs Advanced	010021		230.00

Commercial Checki Request for Certificate of Correction 230.00

Beck & Thomas, P.C. 0868

Commissioner for Patents		09/12/2007	
Costs Advanced	010021		230.00

Commercial Checki Request for Certificate of Correction 230.00

PAYMENT RECORD

ED 875286961 US

EXPRESS MAIL
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Post Office To Address

ORIGIN (POSTAL SERVICE USE ONLY)

PO ZIP Code: 15216	Day of Delivery: ☒ Next ☐ 2nd ☐ 2nd Del. Day	Postage: $ 16.25
Date Accepted: 09 12 07 (Mo. Day Year)	Scheduled Date of Delivery: 09 13 (Month Day)	Return Receipt Fee: $
Time Accepted: 307 ☐ AM ☐ PM	Scheduled Time of Delivery: ☒ Noon ☐ 3 PM	COD Fee: $ / Insurance Fee: $
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PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.: X152797
Federal Agency Acct. No. or Postal Service Acct. No.

FROM: (PLEASE PRINT) PHONE (412) 343-9700

Beck + Thomas, P.C.
1575 McFarland Rd.
Suite 100
Pittsburgh, PA 15216

TO: (PLEASE PRINT) PHONE

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

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Visit www.usps.com
Call 1-800-222-1811

EMS

The dating stamp of the U.S. Patent and Trademark Office on this card will be taken as an indication that the accompanying paper was filed.

Inventor:	James A. O'Brien, II
Serial No.	09/841,281
Filed:	April 24, 2001
U.S. Patent No.:	6,746,060
Issue Date:	June 8, 2004
Title:	"Tubular Latch Assembly for Exit Devices and Locks"
9/12/07:	Letter Requesting Correction of Assignee (1 page)
9/12/07:	Notice of Recordation of Assignment (1 page)
9/12/07:	Certificate of Correction (1 page)
9/12/07:	Check No. 0868 in the amount of $230.00

B&T File No. 010021 Express Mail No. ED 875286961 US

ED875286961US

The dating stamp of the U.S. Patent and Trademark Office on this card will be taken as an indication that the accompanying paper was filed.

Inventor:	James A. O'Brien, II
Serial No.	09/841,281
Filed:	April 24, 2001
U.S. Patent No.:	6,746,060
Issue Date:	June 8, 2004
Title:	"Tubular Latch Assembly for Exit Devices and Locks"
9/12/07:	Letter Requesting Correction of Assignee (1 page)
9/12/07:	Notice of Recordation of Assignment (1 page)
9/12/07:	Certificate of Correction (1 page)
9/12/07:	Check No. 0868 in the amount of $230.00

B&T File No. 010021 Express Mail No. ED 875286961 US

OIPE IAP88 SEP 1 2 2007 PATENT & TRADEMARK OFFICE

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

#4

MAILED

FEB 25 2002

Office of the Director
Group 3600

Del Christensen
Shell Oil Company
P. O. Box 2463
Houston, TX 77252-2463

In re Application of
Harold J. Vinegar, Et. Al.
SERIAL NO: 09/841,284
FILED: April 24, 2001
FOR: IN SITU THERMAL PROCESSING OF A COAL FORMATION TO INCREASE A PERMEABILITY /POROSITY OF THE FORMATION

DECISION ON PETITION TO MAKE APPLICATION SPECIAL (AGE)

This is a decision on your petition submitted on January 22, 2002, to make the above-referenced application special on the basis that applicant is over 65 years of age.

The petition has been found to comply with all requirements of section 708.02, part IV of the Manual of Patent Examining Procedures, and will be **GRANTED** for that reason.

The Examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examiner such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, through out its entire prosecution and pendency, including interference or appeal, if any, only if Petitioner makes a prompt bona fide effort, in response to each office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the Examiner to accomplish this purpose.

The application is being forwarded to the examiner for accelerated examination consistent with the provisions of section 708.02 of the MPEP.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868
Rjb-2/21/02

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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DEL CHRISTENSEN
SHELL OIL COMPANY
P.O. BOX 2463
HOUSTON, TX 77252-2463

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OFFICE OF PETITIONS

In re Application of	:	DECISION ON PETITION
Maher et al.	:	
Application No. 09/841,287	:	
Filed: February 6, 2001	:	
Attorney Docket Number:	:	
5659-03800/EBM	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed September 23, 2004 (Certificate of Mailing dated September 20, 2004).

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due mailed June 8, 2004. The Notice set a non-extendable statutory period for reply of three (3) months. Accordingly, the application became abandoned on September 9, 2004. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition Applicant has submitted the issue fee.

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

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

Derek L. Woods
Attorney/Advisor
Office of Petitions

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Paper No. 36

DEL CHRISTENSEN
SHELL OIL COMPANY
P.O. BOX 2463
HOUSTON, TX 77252-2463

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AUG 1 9 2004
OFFICE OF PETITIONS

In re Application of
Eric Pierre de Rouffignac, et al. :
Application No. 09/841,299 : ON PETITION
Filed: April 24, 2001 :
Attorney Docket No. 5659-02500/EBM :

This is a decision on the renewed petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee, filed August 16, 2004.

It does not appear that the instant petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of David W. Quimby 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. However, if Mr. Quimby desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Quimby, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the correspondence address of record.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid January 23, 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]

[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).

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 3672 for further processing of the request for continued examination under 37 CFR 1.114 filed August 16, 2004.

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

cc: DAVID W. QUIMBY
MEYERTONS, HOOD, KIVLIN, KOWERT
& GOETZEL, P.C.
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Himanshu S. Amin
Amin & Turocy, LLP
National City Center
1900 E. 9th Street, 24th Floor
Cleveland, OH 44114

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OFFICE OF PETITIONS

In re Application of	:	
Clark et al.	:	
Application No.: 09/841,314	:	DECISION ON
Filing or 371(c) Date: 04/24/2001	:	PETITION
Attorney Docket Number: LINCP103US	:	

This is a decision in response to the Petition Under 37 CFR 1.137(b), filed August 10, 2006. The petition requests revival of the application and waiver of the petition fee. The petition is properly treated under 37 CFR 1.181 (no fee), and alternatively under 1.137(b).

This Petition under 37 CFR 1.181 is **dismissed**.

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

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed September 29, 2005. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a).

Applicant filed a reply/amendment on November 8, 2005; however, the amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action, mailed July 27, 2006. No complete and proper reply having been received, the application became abandoned on December 30, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

Petition under 37 CFR 1.181

Applicant requests waiver of the petition fee and in support of this requests asserts that the reply to the Office action filed November 8, 2005, was believed to place the application in condition for allowance. Applicant avers that he received no further communication from this Office until the mailing of the Advisory Action on July 27, 2006.

Applicant states that the Examiner agrees that the delay in mailing the Advisory Action was an error and that the abandonment of the application was due to an Office error.

Applicable Law, Rules and MPEP

The MPEP 706.07(f), Time for reply to a final rejection, explains that

> The time for reply to a final rejection is as follows:
> (A) All final rejections setting a 3-month shortened statutory period (SSP) for reply should contain one of form paragraphs 7.39, 7.40, 7.40.01, 7.40.02, 7.41, 7.41.03, 7.42.03, 7.42.031, or 7.42.09 advising applicant that if the reply is filed within 2 months of the date of the final Office action, the shortened statutory period will expire at 3 months from the date of the final rejection or on the date the advisory action is mailed, whichever is later. Thus, a variable reply period will be established. If the last day of "2 months of the date of the final Office action" falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, and a reply is filed on the next succeeding day which is not a Saturday, Sunday, or a Federal holiday, pursuant to 37 CFR 1.7(a), the reply is deemed to have been filed within the 2 months period and the shortened statutory period will expire at 3 months from the date of the final rejection or on the mailing date of the advisory action, whichever is later (see MPEP §710.05). In no event can the statutory period for reply expire later than 6 months from the mailing date of the final rejection.

MPEP 711.03(c)

Analysis and conclusion

A review of the Office action reveals that this language was also included therein on page five (5). In view of the above, the request for a refund of the petition fee is dismissed.

The petition to revive under 37 CFR 1.137(b)

Applicant has file a Request for Continued Examination and fee, and a submission in the form of an Amendment with the present petition. Accordingly, the petition is granted.

The petition fee has been charged to deposit account 50-1063 as authorized in the petition.

The application is being referred to Technology Center Art Unit 2617 for continued processing in due course.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 8

COOLEY GODWARD, LLP
3000 EL CAMINO REAL
5 PALO ALTO SQUARE
PALO ALTO, CA 94306

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SEP 1 0 2001

OFFICE OF PETITIONS

In re Application of Dan W. Urry Application No. 09/841,321 Filed: April 23, 2001 Attorney Docket No. BERL-020/04U	DECISION ON PETITION

This is a decision on the petition, filed June 19, 2001, requesting that the above-identified application be accorded a filing date of April 23, 2001.

Application papers in the above-identified application were filed on April 23, 2001. However, on June 4, 2001, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings.

Petitioner asserts *inter alia* that the application was in fact filed with drawings, and that no further deposit of drawings is necessary to be entitled to a filing date. In support thereof, petitioner submitted a return receipt postcard identifying this application by attorney docket number and express mail label number, itemizing "Drawings: 6 sheets ... formal" as enclosed, bearing a United States Patent and Trademark Office date-stamp of April 23, 2001, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

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

Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 03-3117, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of April 23, 2001, using the application papers received in the Office on that date and the 6 sheets of drawings, figures 1-10 resubmitted on June 19, 2001. The application is also being forwarded to OIPE for consideration of the other items filed in response to the "Notice of Incomplete Nonprovisional Application" mailed June 4, 2001. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

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

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

June 4, 2003

Gregory D. DeGrazia
Howard & Howard
The Pinehurst Office Center, Suite 101
39400 Woodward Ave.
Bloomfield Hills, MI 48304-5151

In re application of:
Jean-Claude Thibault et al DECISION ON PETITION
Serial No.: 09/841,371
Filed: April 24, 2001
For: METHOD OF SEALING A CARTRIDGE OR OTHER MEDICAL CONTAINER WITH A PLASTIC CLOSURE

This is a decision on the petition received on September 30, 2002, 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 June 18, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned August 19, 2001. The Notice of Abandonment was mailed on August 22, 2002.

On September 20, 2002, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice of Missing Parts on September 14, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice of Missing Parts on September 14, 2001.

The petition is hereby Granted.

The application has been completed for release to Technology Center 3721.

The office regrets any inconvenience this may have caused the client.

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

Doshie Day

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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#4

Schwabe, Williamson & Wyatt, P.C.
Pacwest Center, Suites 1600-1900
1211 SW Fifth Avenue
Portland, OR 97204

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Office of the Director
Group 3600

In re application of
Wing Wah Loh et al.
Application No. 09/841,400 :
Filed: April 23, 2001 :
For: METHOD AND SYSTEM FOR FACILITATING FOREIGN CURRENCY EXCHANGE TRANSACTIONS OVER A NETWORK :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on February 7, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), a proper reason for withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided. Furthermore, there is no indication in the file record of the assignee being the "client". The file record would appear to indicate that the applicants are the client by virtue of their conferring power of attorney to the attorneys listed in the declaration.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
(703) 605-0586 (facsimile)

SNM/tpl: 3/5/03

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Paper No. 11

EPIGENESIS PHARMACEUTICALS
7 CLARK DRIVE
CANBURY, NJ 08520

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JUL 2 2 2003

OFFICE OF PETITIONS

In re Application of	:	
Jonathan W. Nyce	:	
Application No. 09/841,426	:	ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. EPI-00311	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 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 non-final Office action mailed April 9, 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 July 10, 2002.

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.

The application file is being forwarded to Technology Center AU 1617.

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

cc: HOWREY SIMON ARNOLD & WHITE
301 RAVENSWOOD AVENUE
BOX 34
MENLO PARK, CA 94025

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

In re Application of	:	
Wellington et al.	:	
Application No. 09/841,433	:	ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. TH-1944(US)	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 22, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed June 8, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 9, 2004.

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

A review of USPTO financial records indicates that the issue fee and publication fee have not been collected. Accordingly, $1670.00 will be charged to petitioner's deposit account as authorized.

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.

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

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

Enclosure: PTOL-85b

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

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Kevin Albert Maher et al	:	
Application No. 09/841,442	:	
Filed: April 24, 2001	:	
Attorney Docket No. 5659-05900/EBM	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 22, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee and the publication fee in a timely manner in reply to the Notice of Allowance mailed June 8, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on September 9, 2004.

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.

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) 272-3208.

The file is being referred to Publishing Division.

Karen Creasy

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

cc:
DEL S. CHRISTENSEN
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UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 16 2002

Office of the Director
Group 3600

Del Christensen
Shell Oil Company
P. O. Box 2463
Houston, TX 77252-2463

In re Application of
Scott Lee Wellington, et.al.
SERIAL NO:09/841,447
FILED: April 24, 2001
FOR: IN SITU THERMAL PROCESSING OF A HYDROCARBON CONTAINING FORMATION USING A NATURAL DISTRIBUTED COMBUSTOR

DECISION ON PETITION TO MAKE APPLICATION SPECIAL (AGE)

This is a decision on your petition submitted on January 22, 2002, to make the above-referenced application special on the basis of applicant's age.

The petition has been found to comply with all requirements of section 708.02, part III of the Manual of Patent Examining Procedure, specifically that evidence had been provided that applicant's age is such that he might not be available to assist in the prosecution of the application if it were to run it's normal course, and will be GRANTED for that reason.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if Petitioner makes a prompt bona fide effort, in response to each office action, to place the applicant in condition for allowance, even if it is necessary to conduct an interview with the Examiner to accomplish this purpose.

The application is being forwarded to the examiner for accelerated examination consistent with the provisions of section 708.02 of the MPEP.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703)- 308-3868
Rjb: 05/16/02

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Paper No. None

WILLIAM P. WILBAR
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STATE LINE NV 89449

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SEP 22 2005

OFFICE OF PETITIONS

In re Application of Yervant D. Lepejian, Gurgen Lachinian, John Hovannes Gookassian, and Arman Sagatelian Application No. 09/841,460 Filed: April 24, 2001 Attorney Docket No. HEUR-017 Title: SOFTWARE DEVELOPMENT TOOL EMPLOYING WORKFLOWS FOR DEVELOPING USER INTERACTIVE PROGRAMS	DECISION ON PETITION UNDER 37 C.F.R. §1.182

This is a decision on the petition under 37 C.F.R. §1.182, filed September 6, 2005, to change the name of one of the joint inventors. Petitioner has requested that the inventor formerly known as "Hovhannes Ghukassyan" be listed as "John Hovannes Gookassian."

Petitioner has submitted the petition fee of $400, an affidavit which has been signed with both names, and a copy of a granted petition from the United States District Court.

The petition under 37 C.F.R. §1.182 is **GRANTED**. The inventor is now listed as:

John Hovannes Gookassian

A corrected filing receipt has been enclosed.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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FISH & RICHARDSON PC
225 FRANKLIN STREET
BOSTON, MA 02110

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OFFICE OF PETITIONS

In re Application of	:
Patrizio Vinciarelli et al	:
Application No. 09/841,471	: DECISION GRANTING PETITION
Filed: April 24, 2001	: UNDER 37 CFR 313(c)(2)
Attorney Docket No. 00614-120001	:

This is a decision on the petition, filed July 16, 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 June 1, 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 2836 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

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

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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).

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BOSTON, MA 02110

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OCT 2 5 2005

OFFICE OF PETITIONS

In re Application of	:	
Vinciarelli et al.	:	
Application No. 09/841,471	:	DECISION ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. 00614-120001	:	

This is a decision on the petition filed September 28, 2005, to withdraw the holding of abandonment, and in the alternative, a petition under 37 CFR 1.137(b) to revive the above-identified application.

On August 23, 2004, the Office mailed a Notice of Allowance and Fee(s) Due ("Notice of Allowance"), which set a three (3) month statutory period to pay the issue fee and the publication fee. The application became abandoned on November 24, 2004. A Notice of Abandonment was mailed on September 2, 2005.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

On June 1, 2004, petitioners paid the issue fee and the publication fee in response to the First Notice of Allowance mailed on April 7, 2004. On July 16, 2004, petitioners filed a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee. The petition was granted by the decision of July 26, 2004, which stated that the application was withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). Furthermore, petitioners were advised that the issue fee paid on June 1, 2004, could not be refunded; however, petitioners could request that it be applied to the issue fee required by a new Notice of Allowance, if the application was again allowed. The decision informed petitioners that the request to apply the issue fee to the new Notice of Allowance could be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b). Lastly, the decision advised petitioners that, whether or not the Notice of Allowance indicated that a fee was due, the Issue Fee Transmittal Form PTOL-85(b) **MUST** be completed and timely submitted to avoid abandonment. Moreover, the Second Notice of Allowance stated in bold language that the PTOL-85(b) (or an equivalent) **MUST** be returned within the period indicated, even if no fee is due, or the application will be regarded abandoned.

In the present petition, petitioners asserted that on September 22, 2005, they filed a response to the Second Notice of Allowance, which included comments on the reasons for allowance and a general authorization "to apply any charges or credits to our Deposit Account No. 06-1050." Petitioners admitted that they did not submit a completed form PTOL-85(b) with their response due to petitioners' error. Petitioners averred that their records showed that they did not believe a completed form PTOL-85(b) was necessary for responding to the Second Notice of Allowance. Petitioners explained that they believed that the mistake occurred because the Second Notice of Allowance did not indicate that an issue fee was due and the fact that they previously submitted the Issue Fee Transmittal Form PTOL-85(b) in response to the First Notice of Allowance. Petitioners further asserted that 35 U.S.C. 151 requires that the sum specified by the Notice of Allowance be paid within three months of the notice; however, the Second Notice of Allowance did not indicate that any issue fee or publication fee was due. Therefore, petitioners stated that their response did not run afoul of 35 U.S.C. 151.

Upon a review of petitioner's arguments and the office record, the showing of record is insufficient to warrant withdrawal of the holding of abandonment.

The Office notified petitioners in the First and Second Notices of Allowance and in the decision of July 26, 2004, that if the issue fee had already been paid and prosecution was reopened, petitioners could request a refund or request that the fee be credited to a deposit account. However, if the application was again allowed, upon receipt of a new Notice of Allowance, petitioners could request that the previously submitted issue fee be applied to the application by completing a new Issue Fee Transmittal Form PTOL-85(b) .

As previously stated, petitioners did not believe a completed form PTOL-85(b) was necessary for responding to the Second Notice of Allowance because the Second Notice of Allowance did not indicate any issue fee or publication fee was due. The Office reminds petitioner of Section 1308 of the Manual for Patent Examining procedure which states: "[T]he Notice of Allowance will reflect an issue fee amount that is due that is the difference between the current issue fee amount and the issue fee that was previously paid." On the mail date of the Second Notice of Allowance, the amount due for the issue fee and the publication fee did not increase, and therefore, the Notice showed a difference owed of $0.

In view of the above, the petition to withdraw the holding of abandonment is **dismissed**.

PETITION UNDER 37 CFR 1.137(b)

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

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). Petitioners must notify the Office if this is not a correct interpretation of the statement contained in the present petition.

The Office notes that the issue fee increased from the mail date of the Second Notice of Allowance and the date petitioners paid the fee. The issue fee increased to $1,400.00. Therefore, petitioners' Deposit Account will be charged the difference of $70.00, as authorized. Furthermore, the $400.00 petition fee is unnecessary and will applied to the amount due for filing the petition under 37 CFR 1.137(b). Accordingly, the Office will also charge the Deposit Account $1,100.00 for the remaining balance of the petition fee.

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

This matter is being referred to the Office of Patent Publication for processing into a patent.

Telephone inquiries concerning the issuance of the application into a patent should be directed to the Office of Patent Publication, Customer Service at (703) 305-8497.

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

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

COPY MAILED

FEB 0 9 2007

OFFICE OF PETITIONS

In re Patent No. 6,985,341	:	DECISION ON REQUEST FOR
Vinciarelli et al.	:	RECONSIDERATION OF
Issue Date: January 10, 2006	:	PATENT TERM ADJUSTMENT
Application No. 09/841,471	:	and
Filed: April 24, 2001	:	NOTICE OF INTENT TO ISSUE
Atty Docket No. 00614-120001	:	CERTIFICATE OF CORRECTION
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed March 13, 2006. Patentees request that the patent term adjustment indicated on the face of the patent be corrected from zero (0) days to three hundred seventy-six (376) days.

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

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **ONE (1)** day.

On January 10, 2006, the above-identified application matured into U.S. Patent No. 6,985,341, with a revised patent term adjustment of 0 days. On March 13, 2006 (certificate of mailing dated March 10, 2006), patentees timely submitted this request for reconsideration of patent term adjustment (with required fee) within 2 months of the issuance of the patent. In effect, patentees dispute[1] the reductions for applicant delay of 336 days

[1] Patentees state that there were no circumstances within this case history that constitute a failure by the Patentees to engage in reasonable efforts to conclude processing or examination of the above-identified application as set forth in 37 CFR § 1.704. However, patentees expressly state that they do

and 309 days entered after the mailing of the notice of allowance.

The application has been reviewed and it is determined that only one of these reductions should have been entered. 37 CFR 1.704(c)(3) provides that the patent term adjustment should be reduced as follows for:

> Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:
>
> (i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or
>
> (ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed;

In this instance, the application became abandoned for failure to respond within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed August 23, 2004. A Notice of Abandonment was mailed on September 2, 2005. It is noted that the petition to withdraw the holding of abandonment or in the alternative, to revive the application was filed within two months on September 23, 2005. (Thus, no reduction under 37 CFR 1.704(c)(4) was or should have been entered). A decision granting the petition was mailed on October 25, 2005, within four months of the filing date of the petition. Accordingly, a period of reduction of 336 was properly entered pursuant to 37 CFR 1.704(c)(4) for the period beginning on November 24, 2004, the date of abandonment and ending on October 25, 2005, the date of mailing of the decision.

There is no basis for also entering a reduction of 309 days for applicant delay in submitting the issue fee.

However, patentees are advised that a review of the application revealed a further basis for reduction. A reduction pursuant to

---

not dispute the pre-allowance calculations (which include reductions under 1.704 for applicant delay) and cite specific agreement with the bases and amounts of those reductions (67 days).

§ 1.704(c)(10) of 39 days is proper. After the mailing of the notice of allowance on April 7, 2004 (and payment of the issue fee in response on June 1, 2004), on July 16, 2004, applicants filed a Petition to Withdraw from Issue, a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS). The IDS did not include a § 1.704(d) statement. These papers were fully responded to with the mailing of another Notice of Allowance on August 23, 2004. By definition, this is a failure to engage in reasonable efforts to conclude prosecution within the meaning of § 1.704(c)(10). Thirty-nine days is the number of days in the period, counting the number of days beginning on July 16, 2004 and ending on August 23, 2004.

In view thereof, the patent should have issued with a revised patent term adjustment of one (1) day.

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

The Certificates of Correction Branch has been advised of this decision. The Certificates of Correction Branch is thereby forwarded this application for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **ONE (1)** day.

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

Nancy Johnson

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 : 6,985,341 B2

DATED : January 10, 2006

INVENTOR(S) : Vinciarelli et al.

DRAFT

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

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (0) days

Delete the phrase "by 0 days" and insert – by 1 day--

UNITED STATES 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. 41

DEL CHRISTENSEN
SHELL OIL COMPANY
P O BOX 2463
HOUSTON, TX 77252-2463

COPY MAILED

AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of	:
Eric Pierre de Rouffignac et al	:
Application No. 09/841,493	: DECISION GRANTING PETITION
Filed: April 24, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 5659-06500/EBM	:

This is a decision on the petition, filed August 20, 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 March 19, 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.

Upon receipt of the file in the Office of Petitions and association of the petition, RCE, IDS and decision on petition with the file, the file will be forwarded to Technology Center AU 3673 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

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
www.uspto.gov

LARSON AND LARSON
11199 69TH STREET NORTH
LARGO, FL 33773

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JUN 0 9 2006
OFFICE OF PETITIONS

In re Application of

William Hammesfahr :

Application No. 09/841,546

: DECISION ON PETITION

Filed: April 23, 2001

:

Attorney Docket No. 003BUS

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

The petition is **GRANTED**.

The above-cited application became abandoned for failure to reply in a timely manner to the non-final Office action mailed January 11, 2005, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on April 12, 2005. A Notice of Abandonment was mailed on December 13, 2005.

The amendment filed April 26, 2006, is noted and made of record.

The request for an extension of time within the third month is noted but cannot be granted as the request was made outside the maximum statutory period for reply. It is also noted that the request is not necessary as the application was already in an abandoned status. The amount of $510.0 will be refunded to deposit account 12-0551, in due course.

The application is being forwarded to Technology Center 3700, GAU 3737 for further processing.

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

Kenya A. McLaughlin
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

INTEL CORPORATION
c/o CPA Global
P.O. BOX 52050
MINNEAPOLIS, MN 55402

Mail Date: 05/13/2010

Applicant	: Duncan M. Kitchin	: DECISION ON REQUEST FOR
Patent Number	: 7623496	: RECALCULATION of PATENT
Issue Date	: 11/24/2009	: TERM ADJUSTMENT IN VIEW
Application No	: 09/841,657	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/24/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2790** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 11

HAHN LOESER & PARKS, LLP
TWIN OAKS ESTATE
1225 W. MARKET STREET
AKRON, OH 44313

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OCT 03 2003

OFFICE OF PETITIONS

In re Application of
Yong Y. Hwang
Application No. 09/841,693
Filed: April 24, 2001
Attorney Docket No. 5773-10-CIP

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 15, 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 November 8, 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 application became abandoned on February 10, 2003.

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 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 (703) 306-5594.

The application file is being forwarded to Technology Center 1700, Art Unit 1723 for further processing.

Retta Williams

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

cc: Maxwell J. Petersen
Pauley Petersen & Erickson
2800 W. Higgins Rd, Suite 365
Hoffman Estates, IL 60195

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 6

MAIL

JUL 0 9 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
46TH FLOOR
ONE LIBERTY PLACE
PHILADELPHIA, PA 19103

In re Application of :
Clayton et al. :
Application No. 09/841,718 :
Filed: April 25, 2001 :
For: CONTROLLING EJECT DISTANCE OF A :
DISK CARTRIDGE FROM A DISK DRIVE :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on June 13, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(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 not indicated a future correspondence address (item 4) or if the correspondence address is not affected. Furthermore, Steven H. Meyer, though listed in Customer Number 23,377, would remain of record, since Customer Number 23,377 is not associated with the file.

Accordingly, the request is **DENIED**.

All future communications from the Office will continue to be directed to the above listed address until a change of correspondence is specifically requested. 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.

Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 10

MAIL

AUG 1 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

JONATHAN M. WALDMAN, ESQ.
WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
ONE LIBERTY PLACE – 46TH FLOOR
PHILADELPHIA, PA 19103

In re Application of :
Clayton et al. :
Application No. 09/841,718 :
Filed: April 25, 2001 :
For: CONTROLLING EJECT DISTANCE OF A :
DISK CARTRIDGE FROM A DISK DRIVE :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on July 18, 2003.

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 withdrawal 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.**

Richard E. Kurtz is granted the request for withdrawal. All other attorneys/agents remain of record. Customer Number 23,377 does not appear to be associated with the file.

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.

Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: IOMEGA CORPORATION
10955 VISTA SORRENTO PARKWAY
SAN DIEGO, CA 92130

SPE: C. Nguyen

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/27/07

TO SPE OF : ART UNIT 2616

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/841,754 Patent No.: 6868059

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: _____

HUY D. VO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
SPE

2616
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 4

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

MAILED

JAN 0 4 2002

Technology Center 2100

In re Application of: Luosheng Peng)
Application No.: 09/841,777)
Filed: April 24, 2001) **DECISION ON REQUEST FOR**
For: APPARATUS AND METHODS FOR) **WITHDRAWAL AS ATTORNEY**
INTELLIGENTLY CACHING)
APPLICATIONS AND DATA ON A)
GATEWAY)

This is a decision on the Request To Withdraw from Representation filed November 30, 2001.

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 withdrawal 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**.

Because no request was made for a change in correspondence address, all future communications from the Office will ***continue to be directed to the above-listed address*** until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

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. 6

MAILED

MAR 21 2002

Technology Center 2100

Pennie & Edmonds, LLP
1155 Avenue of the Americas
New York, New York 10036-2711

In re Application of: Luosheng Peng	)	
Application No.: 09/841,777	)	
Filed: April 24, 2001	)	**DECISION ON REQUEST FOR**
For: APPARATUS AND METHODS FOR	)	**WITHDRAWAL AS ATTORNEY**
INTELLIGENTLY CACHING	)	
APPLICATIONS AND DATA ON A	)	
GATEWAY	)	

This is a decision on the Request To Withdraw from Representation filed January 18, 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 effective date of withdrawal 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.

Due to an oversight a request for a change of correspondence address was not filed with the original request for withdrawal. The new request clarifies that a change of correspondence address is requested. The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Electronic Commerce
(703) 306-4160

cc: Mr. Steven Artim
Chief Executive Officer
DoOnGo Technologies, Inc.
2065 Martin Avenue, Suite 108
Santa Clara, California 95050

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Originally 6-28-05

DATE : February 9, 2006

Paper No.: _____

TO SPE OF : ART UNIT 2825

SUBJECT : Request for Certificate of Correction on Patent No.: 6,890,853/Appl.09/841,800

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.

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

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:

US 6,001,133 is not available and is listed as withdrawn in EAST.
WO 99/186603 is corrected to read WO 99/18603.
The references do not affect the patentability.

B. WILLIAM BAUMEISTER
SUPERVISORY PATENT EXAMINER

SPE

2891
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 14, 2006

TO SPE OF : ART UNIT ~~3762~~ 2891

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/841800 patent No.: ~~6,988,982~~ 6,890,853

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

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

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

Magdalene Talley

Certificates of Correction Branch

703-308-9390 ext. 116

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

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

Comments: _____

B. WILLIAM BAUMGARTNER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

SPE

2891
Art Unit

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

SAMUEL H DWORETSKY
AT&T CORP
PO BOX 4110
MIDDLETOWN NJ 07748-411

COPY MAILED

OCT 3 1 2002

OFFICE OF PETITIONS

In re Application of
Kapitskaia, et al.
Application No. 09/841,834
Filed: April 25, 2001
Attorney Docket No. 2000-0255

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition pursuant to 37 CFR 1.47(a), filed February 12, 2002.

The petition under 37 C.F.R. 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. 1.136(a).

The above-identified application was filed on April 25, 2001, without an executed oath or declaration. Accordingly, on June 18, 2001, the Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application. This Notice set a two month period for reply.

In reply, applicant filed the instant petition (and fee) and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a five month extension of time and included a Certificate of Mailing dated January 18, 2002. Applicant included a declaration signed by inventors Raymond Ng and Divesh Srivastava. The declaration lacked a signature from inventor Olga Kapitskaia.

On petition, attorney Benjamin Lee included a declaration of facts from Felicia Adadevoh, the person having firsthand knowledge of the efforts taken to transmit the application papers to Kapitskaia. According to Adadevoh, the oath and declaration "along with other papers" were forwarded to Kapitskaia via Federal Express in late August, 2001. In addition, Adadevoh states that no response as of the date of the petition has been received, and the Federal Express package was not returned to sender.

A grantable petition under 37 C.F.R. 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached after diligent effort or refuses to sign the oath or declaration after having

been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 C.F.R. 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Rule 47 applicant has not met requirement (1) above.

As to requirement (1), applicant has not demonstrated that a copy of the entire application papers (specification, including claims and drawings) were sent for the nonsigning inventor's review. The record only establishes that a copy of the declaration was forwarded for signature. Requiring that an inventor be presented with the application papers before a petition under 37 C.F.R. 1.47 is granted "ensures that the inventor is apprised of the application to which the oath or declaration is directed."[1]

Furthermore, the petition reveals that on January 18, 2002, Kapitskaia stated she would try to sign and return the declaration within a week's time. Accordingly, on renewed petition, Rule 47 applicant must either provide a copy of the executed declaration, or applicant must state that the declaration was never received.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

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

---

[1] MPEP 409.03(d).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

SAMUEL H DWORETSKY
AT&T CORP
PO BOX 4110
MIDDLETOWN NJ 07748-411

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JAN 2 9 2003

OFFICE OF PETITIONS

In re Application of Kapitskaia, et al. Application No. 09/841,834 Filed: April 25, 2001 Attorney Docket No. 2000-0255	: : : : :	DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the Request for Reconsideration of Petition Under 37 CFR 1.47(a), filed December 30, 2002.

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on April 25, 2001, without an executed oath or declaration. Accordingly, on June 18, 2001, the Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application. This Notice set a two month period for reply.

In reply, applicant filed a petition under 37 CFR 1.47(a) on February 12, 2002 and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a five month extension of time and included a Certificate of Mailing dated January 18, 2002. Applicant included a declaration signed by inventors Raymond Ng and Divesh Srivastava. The declaration lacked a signature from inventor Olga Kapitskaia.

However, this petition was dismissed in a decision mailed on October 31, 2002. Petitioner did not establish that a copy of the application papers had been sent to Kapitskaia for her review. In addition, petitioner provided an e-mail from Kapitskaia indicating her intention to sign and return the declaration within one week.

With the instant petition, petitioner attested that he had firsthand knowledge that the application papers were in fact sent to Kapitskaia for her review. In addition, according to petitioner, no executed declaration from Kapitskaia has been received as of the date of the petition.

The declaration filed February 12, 2002, and the petition have been reviewed and found to be in compliance with 37 CFR 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being forwarded to the Office of Initial Patent Examination for pre-examination processing.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

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

Cliff Congo
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

OLGA KAPITSKAIA
32 BI RUE DU COTENTIN
75015 PARIS
FRANCE
AIR-MAIL

COPY MAILED

JAN 2 9 2003

OFFICE OF PETITIONS

In re Reissue Application of :
Olga Kapitskaia, Raymond Ng, and :
Divesh Srivastava :
Application No. 09/841,834 :
Filed: April 25, 2001 :
Title: METHOD FOR USING QUERY
TEMPLATES IN DIRECTORY CACHES

LETTER

Dear Ms. Kapitskaia:

You are named as a joint 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(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint 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 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, agent 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.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. 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 the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

Benjamin S. Lee
AT&T Corporation
P.O. Box 4110
Middletown, New Jersey 07748
908-532-1904

UNITED STATES 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

SAMUEL H. DWORETSKY
AT&T CORPORATION
P.O. BOX 4110
MIDDLETOWN, NJ 07748-4110

COPY MAILED

OCT 28 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Kapitskaia et al.	:
Application No. 09/841,834	:
Filed: April 25, 2001	:
Attorney Docket No. Kapitskaia 2000-0255	:

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 13, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed November 10, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 11, 2004. A Notice of Abandonment was mailed July 26, 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 2100 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
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

THE LAW OFFICES OF MIKIO ISHIMARU
333 W. EL CAMINO REAL
SUITE 330
SUNNYVALE CA 94087

COPY MAILED
OCT 1 2 2006
OFFICE OF PETITIONS

In re Application of	:	
Terreault et al.	:	
Application No. 09/841,837	:	ON PETITION
Filed: April 26, 2001	:	
Attorney Docket No. 428-B01.US	:	

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 undersigned at (571) 272-3282.

Liana Chase Walsh
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:

DATE : 8/12/07

TO SPE OF : ART UNIT 2611

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

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:

SPE: N. G. 2611 Art Unit

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

PTO/SB/44 (04-04)
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 : 7,142,609 B2
DATED : November 28, 2006
INVENTOR(S) : Terreault, et al.

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

Column 14

Line 36, delete the following that begins with "Referring now to FIG. 9. according to one aspect...", and ends with "(15%) can be extracted." on column 15, line 3, and insert the following:

The proposed method is to use spectrum analyzer functionality to sample the signal amplitude with a resolution bandwidth of the same order of magnitude as the signal (i.e. 1 or 3 MHz) for the 6 MHz signal, but a small video bandwidth (1 kHz); to trigger the sampling sequences to the power line and apply averaging preferably over between twenty (20) and two hundred (200) averages. By zooming onto the small amplitude modulation, a peak-to-peak modulation from one tenth (0.1%) of a percent to fifteen percent (15%) can be extracted.

Referring now to FIG. 9, according to one aspect of the present invention, there is provided a method 900 for detecting and quantifying impairments of a received communication signal of a quadrature amplitude modulation data communication system represented by a plurality of ideal values, said method comprises the steps of:

a) storing 902 a statistically significant number of a plurality of received points of said signal for each of said ideal values corresponding to a plurality of groups of said plurality of ideal values, each of said received points being defined by an in-phase and a quadrature components in a coordinate system in which a first axis is an in-phase axis and a second axis is a quadrature axis, said components having corresponding ideal components from their respective of said ideal values, each of said groups corresponding to a respective of said impairments and being specific to the same;

b) analyzing 904 said components of said received points of respective of said groups in relation with their respective of said ideal components of said ideal values to quantify said impairments of said signal and provide calculated values of the same; and

c) displaying 906 said calculated values of said impairments.

Column 15

Claim 1, line 15, delete "(OAM)" and insert therefor -- (QAM)--

Claim 1, line 34, delete "qadrature" and insert therefor -- quadrature--

Claim 1, line 36, delete "quadruture" and insert therefor -- quadrature--

Claim 1, line 40, delete "imparments" and insert therefor -- impairments--

Claim 1, line 42, delete "compression ratio. I/O" and insert therefore -- compression ratio, I/Q--

Claim 1, line 42, delete "I/O phase" and insert therefor -- I/Q phase--

Claim 3, line 61, delete "cower" and insert therefor -- corner--

Column 16

Claim 4, line 11, delete "ia-phase" and insert therefore -- in-phase--

Claim 6, line 59, delete "sub-avenge" and insert therefore -- sub-average--

Column 17

Claim 6, line 13, delete "Conning" and insert therefore -- forming--

Claim 7, line 25, delete "bath" and insert therefore -- both--

Column 18

Claim 10, line 1, delete "band" and insert therefore -- baud--

Claim 12, line 26, delete "(hum) said" and insert therefore -- (hum), said--

Claim 12, line 36, delete "rare" and insert therefore -- rate--

Column 20

Claim 12, line 3 and 4, delete "peak-re-peak" and insert therefore -- peak-to-peak--

MAILING ADDRESS OF SENDER:
Mikio Ishimaru
The Law Offices of Mikio Ishimaru
333 W. El Camino Real, Suite # 330
Sunnyvale, CA 94087

PATENT NO: 7,142,609 B2

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

EZRA SUTTON, P.A.
PLAZA 9, 900 ROUTE 9
WOODBRIDGE NJ 07095

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OCT 1 7 2008

OFFICE OF PETITIONS

In re Patent No. 6,537,549 :
Issue Date: March 25, 2003 :
Application No. 09/841,844 : ON PETITION
Filed: April 25, 2001 :
Attorney Docket No. TOBINICK 3.0-013 :
(CIP) :

This is a decision on the petition under 37 CFR 1.378(c), filed June 17, 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 26, 2007 for failure to pay the first 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) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Steven H. Slater
SLATER & MATSIL, LLP
17950 Preston Road, Suite 1000
Dallas, TX 75252

MAIL

AUG 0 3 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Miesen, et al.
Application No. 09/841,848
Filed: April 25, 2001
For: VOICE ACTIVATED WIRELESS NAVIGATION OF COMPUTER NETWORKS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed June 3, 2004.

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 withdrawal is the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 10.40(a) further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The singer of the petition, Steven H. Slater is not appointed as an attorney or agent of record. Therefor he is not authorized to act on behalf of the attorneys or record, nor can he effect a change of address.

For the above stated reasons, the request is **DISMISSED AS MOOT**.

All future communications from the United States Patent and Trademark Office (Office) will continue to be directed to the below-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

cc: Mr. David Lau
Wirenix, Inc.
3330 Earhart Drive
Suite 102
Carrollton, TX 75006

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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OCT 16 2006

OFFICE OF PETITIONS

BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

In re Application of	:	
Donal Doherty et al.	:	
Application No. 09/841,872	:	DECISION ON PETITION
Filed: April 26, 2001	:	TO WITHDRAW
Attorney Docket No. 4669-0101P	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 14, 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 attorneys/agents associated with customer number 02292. 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).

James T. Eller signed the request on behalf of all attorneys of record.

James T. Eller and all attorneys/agents associated with application have been withdrawn.

Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the first named signing inventor or the assignee of the entire interest at the fist copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Charles Smoot at 571-272-3299.

David Bucci
Petitions Examiner
Office of Petitions

Cc: Donal Doherty
10 Clonsleigh, Shankill
County Dublin, Ireland

Cc: ISCAN LIMITED
20 Belvedere Place
Dublin, Ireland

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/841,872	04/26/2001	Donal Doherty	

CONFIRMATION NO. 6150

OC000000020605753

Donal Doherty
10 Clonsleigh, Shankill
County Dublin,
IRELAND

Date Mailed: 09/27/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 07/14/2006.

- 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.

Charles Smoot

CHARLES SMOOT
OP (571) 272-3299

FORMER ATTORNEY/AGENT COPY

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 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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JUL 14 2005

OFFICE OF PETITIONS

In re Application of	:	
Masao Mougi, et al.	:	
Application No. 09/841,883	:	ON PETITION
Filed: April 24, 2001	:	
Attorney Docket No. 16869P025800	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 24, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply to a non-final Office action.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of amendment; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being referred to Technology Center 3600.

Marianne E. Jenkins
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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MATHEWS COLLINS SHEPHERD & GOULD PA
100 THANET CR, SUITE 306
PRINCETON, NJ 08540

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DEC 17 2004

OFFICE OF PETITIONS

In re Application of :
Amos B. Smith et al :
Application No. 09/841,951 :
Filed: April 25, 2001 :
Attorney Docket No. 4730-103 US :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 20, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure submit the Issue fee in a timely manner in reply to the Notice of Allowance mailed May 18, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on August 19, 2004.

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

This matter is being forwarded to the Publishing Division.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.20081002:

DATE : 02 Nov 2008

TO SPE OF : 1639

DATE : 12-20-06

TO SPE OF : ART UNIT 1639

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/841951 Patent No.: 6891046

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 Check claims

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

Certificates of Correction Branch

703-308-9390 ext. 117

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:

/Christopher S. F. Low/
Supervisory Patent Examiner, Art Unit 1639

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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FROMMER LAWRENCE & HAUG
745 FIFTH AVENUE- 10TH FL.
NEW YORK, NY 10151

Mail Date: 04/23/2010

Applicant	: Isao Kawashima	: DECISION ON REQUEST FOR
Patent Number	: 7620900	: RECALCULATION of PATENT
Issue Date	: 11/17/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/841,957	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 04/25/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **767** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 6

Wolff & Samson
5 Becker Farm Road
Roseland, NJ 07068-1776

MAIL

SEP 04 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Thanabalan Paul et al.)
Application No. 09/841,972)
Filed: April 25, 2001)
For: GENERIC QUALITY OF SERVICE PROTOCOL AND ARCHITECTURE FOR USER APPLICATIONS IN MULTIPLE TRANSPORT PROTOCOL ENVIRONMENTS)

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed August 7, 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 effective date of withdrawal 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**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). 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.

FOR

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture and Software
(703) 305-9750

cc: Bill Baker
Megaxess, Inc. Trevion II
12800 Middlebrook Road
Suite 206
Germantown, MD 20874

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WASHINGTON DC 20005-4051

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OFFICE OF PETITIONS

In re Application of	:	
Terry Lee Goode	:	
Application No. 09/841974	:	
Filing or 371(c) Date: 04/24/2001	:	ON PETITION
Attorney Docket Number:	:	
003921.00011	:	

This is a decision on the "Combined Petition to Expunge and for Expedited Consideration of Petition", filed August 3, 2007. The petition to expunge is properly treated under 37 C.F.R. § 1.59, and the petition for expedited consideration of the petition to expunge is properly treated under 37 C.F.R. § 1.182. The Decision on the petition under 37 CFR 1.182 is being mailed under separate cover.

This Petition under 37 C.F.R. § 1.59 is hereby **granted**.

Petitioner files the present petition to expunge inadvertently submitted information and in support of the petition states that 1) the information is confidential and privileged communication; 2) that except for the inadvertently submitted material, the communication has been maintained in confidence; 3) removal of the information is necessary to avoid irreparable harm caused by public disclosure of the confidential and privileged information; 4) the privileged communication does not constitute material information under 37 CFR 1.56, and 5) Petitioner will retain the communication for the period of any patent to issue on the present application.

The MPEP 724.05(II), Information Unintentionally Submitted in Application, provides

> A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:
> (A) the Office can effect such return prior to the issuance of any patent on the application in issue[1];

[1] The Office will not return the documents from the physical file because it is the Office's policy not to remove papers from files that have been scanned. The image of the recorded document will be "closed" from view, but will remain in the records of the Office.

(B) it is stated 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;
(C) the information has not otherwise been made public;
(D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
(E) it is established to the satisfaction of the Director that the information to be returned is not material information under 37 CFR 1.56; and
(F) the petition fee as set forth in 37 CFR 1.17(*>g<) is included.
A request to expunge information that has not been clearly identified as information that may be later subject to such a request by marking and placement in a separate sealed envelope or container shall be treated on a case-by-case basis. Applicants should note that unidentified information that is a trade secret, proprietary, or subject to a protective order that is submitted in an Information Disclosure Statement may inadvertently be placed in an Office prior art search file by the examiner due to the lack of such identification and may not be retrievable.

The Office will not return the documents from the physical file because it is the Office's policy not to remove papers from files that have been scanned. Even if a petition to "expunge" a document is granted with respect to a particular application or patent, the image of the recorded document will remain in the records of the Office. The Office will, however, "close" the images in the application or patent that was the subject of the petition, so that no information about the recorded document will appear when someone searches for that application or patent number in the electronic file.

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

Derek L. Woods
Attorney
Office of Petitions

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WASHINGTON DC 20005-4051

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OFFICE OF PETITIONS

In re Application of	:	
Terry Lee Goode	:	
Application No. 09/841974	:	
Filing or 371(c) Date: 04/24/2001	:	ON PETITION
Attorney Docket Number:	:	
003921.00011	:	

This is a decision on the "Combined Petition to Expunge and for Expedited Consideration of Petition", filed August 3, 2007.

The Petition for Expedited Consideration of Petition is hereby **granted**.

A Decision on the Petition under 37 CFR 1.59 is being mailed on even date herewith.

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

Derek L. Woods
Attorney
Office of Petitions

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P.O. BOX 2938
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of :
Susnow, et al. :
Application No. 09/842,019 : DECISION ON PETITION
Filed: April 26, 2001 :
For: 219.40042X00 :

This is a decision on the petition under 37 CFR 1.137(a), and, alternatively, under 37 CFR 1.137(b), filed October 31, 2005, to revive the above-identified application.

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

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

The application became abandoned January 28, 2005 for failure to timely submit a proper response to the non-final Office action mailed October 27, 2004. The non-final Office action set a three month statutory period of time for reply. No petition for extension of time under 37 CFR 1.136 is of record. Notice of Abandonment was mailed June 2, 2005.

DECISION UNDER 37 CFR 1.137(a)

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

The instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(a). (See, MPEP 711.03(c) as relates to abandonment attributed to change of correspondence address.) Accordingly, the failure to timely submit a proper reply to the Office communication is accepted as having been unavoidably delayed.

DECISION UNDER 37 CFR 1.137(b)

In view of the decision under 37 CFR 1.137(a), the petition under 37 CRF 1.137(b) has not been considered on the merits and is deemed moot. Accordingly, petitioners are entitled to a refund of the $1,500.00 petition fee submitted in this regard. Petitioners may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

This application is being forwarded to the Technology Center 2600 for further processing.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

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MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

In re Application of :
APPELMAN, Barry et al. :
Application No. 09/842,024 : DECISION ON PETITION
Filed: April 26, 2001 : TO WITHDRAW
Attorney Docket No. **06975-128001** : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 14, 2007.

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 Babak Akhlaghi. Babak Akhlaghi has been withdrawn as attorneys or agents of record all other attorneys remain of record. The correspondence address of record remains unchanged.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Petitions Examiner
Office of Petitions