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ALEXANDRIA, VA 22313-1450
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MAY 12 2004

Paper No. 12

In re Application of
Cody Lambert
Application No. 09/922,529
Filed: December 11, 2001
For: Telescopic Universal Bed Rack

: DECISION ON PETITION

This is a decision on the petition filed on April 26, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated August 20, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

Petitioner alleges that a proper reply to the Office letter in question was timely filed on September 18, 2003 by United States Postal Service "Express Mail." Although the petition indicates that "another copy of the specification letter and drawings of said matter" are enclosed with the petition, no such papers have been received. The only attachments to the petition letter are a copy of the form PTO-90C and attached Notice of Abandonment that were mailed to petitioner on April 6, 2004, a copy of a page from the Internet concerning a search for item, and a copy of a delivery record apparently resulting from that search.

Petitioner's attention is invited to the following Federal regulation governing the filing of correspondence with the Office by "Express Mail", which reads in pertinent part:

> 37 CFR 1.10. Filing of correspondence by "Express Mail".
> (a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).
>
> (b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.
>
> ... ...
>
> (e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
> (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";
> (3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other

official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question.

Without a copy of the item(s) that were alleged to have been mailed and received, the petition cannot be reviewed for compliance with the regulations in order to determine if the petition is grantable. Petitioner should note that there is a requirement that the Office be able to associate the receipt provided by petitioner with the response to the August 20, 2003 letter in this application that petitioner states was filed. This requirement is the reason why the "Express Mail" label number is required to be placed on the correspondence.

Petitioner may file a renewed petition, without fee. The renewed petition must include copies of the correspondence that petitioner alleges to have been filed in response to the Office letter dated August 20, 2003, together with any evidence that will establish that the "Express Mail" item number as set forth on the material that petitioner submitted with the current petition refers to that correspondence. The renewed petition must be filed within two months of this Decision.

The application is being retained in Technology Center 3700 pending the filing of a renewed petition, or other action by petitioner.

PETITION DISMISSED.

E. Rollins-Cross, Director
Technology Center 3700

Cody Lambert
1451 N.E. Lincoln St.
Roseburg, OR 97470

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JUN 28 2004

Paper No. 14

In re Application of
Cody Lambert
Application No. 09/922,529
Filed: December 11, 2001
For: Telescopic Universal Bed Rack

: DECISION ON
: RENEWED PETITION

This is a decision on the renewed petition filed on June 3, 2004 by which petitioner again requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated August 20, 2003. The renewed petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The renewed petition is dismissed.

Petitioner again alleges that a proper reply to the Office letter in question was timely filed on September 18, 2003 by United States Postal Service "Express Mail." Petitioner has now enclosed a copy of the material allegedly filed in response to the Office action in question. This material does **not** have affixed thereto an Express Mail Label Number.

Petitioner's attention is again invited to the following Federal regulation governing the filing of correspondence with the Office by "Express Mail", which reads in pertinent part:

37 CFR 1.10. Filing of correspondence by "Express Mail".
(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

... ...

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
(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";
(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the

requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question. (Emphasis supplied.)

In the absence of an Express Mail Label Number affixed to the papers alleged to have been filed on September 16, 2003, it is impossible to rely upon the evidence offered by petitioner in the form of tracking information from the United States Postal Service because there is no evidence linking this tracking information to the specific material that is alleged to have been filed. Petitioner should note the emphasized material in the Federal Regulation supplied above; this requirement exists so that it would be possible to link USPS tracking information to specific correspondence. Without compliance with this requirement, petitioner cannot rely upon the "Express Mail" practice to establish a filing date for correspondence.

Petitioner may file a renewed petition, without fee. The renewed petition must include any evidence that petitioner has that would associate the tracking information from the USPS with the particular document that is alleged to have been filed on September 16, 2003. Absent such evidence, it would appear that petitioner's recourse is to file a petition to revive this application.

A petition to revive may be appropriate if applicant's failure to respond or to timely respond was either unavoidable or unintentional, as set forth below.

A. Failure to respond was unavoidable.

A petition to revive an abandoned application on the grounds that the failure to respond was unavoidable (37 CFR 1.137(a)) must be accompanied by a showing that the entire delay in filing the required reply from the due date thereof until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable delay, by a proposed reply, and by the petition fee of $ 55.00. No consideration to the substance of a petition will be given until this fee is received.

B. Failure to respond was unintentional.

A petition to revive an abandoned application on the grounds that the failure to respond was unintentional (37 CFR 1.137(b)) must be accompanied by a statement that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, the required reply unless it has been previously filed, and the petition fee of $ 665.00.

Correspondence with respect to a petition to revive should be sent in an envelope addressed to:

Mail Stop Petition
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

Please address the contents of the letter to the Attention of the Office of Petitions.

The application is being returned to storage as an abandoned file, pending further action by petitioner.

RENEWED PETITION DISMISSED.

E. Rollins-Cross, Director
Technology Center 3700

Cody Lambert
1451 N.E. Lincoln St.
Roseburg, OR 97470

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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CODY L LAMBERT
2854 DAYSHA DR
ROSEBURG OR 97470

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JAN 11 2006

OFFICE OF PETITIONS

In re Application of	:	
Cody L. Lambert	:	
Application No. 09/922,529	:	ON PETITION
Filed: December 11, 2001	:	
Title: Telescopic Universal Bed Rack	:	

This is a decision on the paper filed August 11, 2005 (dated August 8, 2005), which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

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

The above-identified application became abandoned for failure to timely file a response to the Office action mailed August 20, 2003, which set a shortened statutory period for reply of one (1) month. No reply having been received, the application became abandoned on September 21, 2003. A Notice of Abandonment was mailed on April 6, 2004. On April 26, 2004 (dated April 18, 2004), Applicant filed a petition to withdraw the holding of abandonment, asserting that he timely filed a response via Express Mail mailing label number ER150654105US on September 18, 2003. However, in a decision mailed on May 12, 2004, the petition was dismissed because applicant did not include a copy of the correspondence alleged to have been filed on September 18, 2003, bearing a copy of Express Mail mailing label number ER150654105US. Applicant filed a renewed petition on June 3, 2004 (dated May 28, 2004), including the papers purported to have been filed on September 18, 2003. However, the papers did not include a copy of the Express Mail mailing label number affixed thereon. Accordingly, the renewed petition was dismissed in a decision mailed on June 28, 2004.

With the instant renewed petition, petitioner has filed a copy of the papers asserted to have been filed on September 18, 2003. This time the papers include a copy of Express Mail mailing label number ER150654105US in the top margin. However, it is noted that these papers submitted with the petition on August 11, 2005, do not appear to be a "true copy" of the papers originally filed, as they differ from the papers filed on June 3, 2004.

37 CFR 1.10(e) states that any person mailing correspondence addressed to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided:

> (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
> (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";
> (3) The petition includes a copy of the **originally deposited** paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in", a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and
> (4) The petition included a statement, which establishes to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any other official notation by the USPS are **true copies** of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS. (Emphasis added).

It is further noted that the petition filed on August 11, 2005 (dated August 8, 2005) also bears a copy of Express Mail mailing label number ER150654105US - the same number affixed to the correspondence allegedly filed on September 18, 2003.

Petitioner is recommended to promptly file a petition to revive under 37 CFR 1.137(b). 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 37 CFR 1.17(m) - currently $750 for a small entity; (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional

A grantable petition under 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 set forth in 37 CFR 1.17(l) - currently $250 for a small entity; (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

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 37 CFR 1.17(m) - currently $750 for a small entity; (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) Any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to paragraph (d) of this section.

The change of correspondence address filed May 22, 2005 has been entered.

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

Cliff Congo
Petitions Attorney
Office of Petitions

Enc: PTO/SB/64 (2 pages)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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CODY L LAMBERT
2854 DAYSHA DR
ROSEBURG OR 97470

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OFFICE OF PETITIONS

In re Application of :
Cody L. Lambert :
Application No. 09/922,529 : ON PETITION
Filed: December 11, 2001 :
Title: Telescopic Universal Bed Rack :

This is a decision on the petition for revival under 37 CFR 1.137(b), filed march 28, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a response to the Office action mailed August 20, 2003, which set a shortened statutory period for reply of one (1) month. No reply having been received, the application became abandoned on September 21, 2003. A Notice of Abandonment was mailed on April 6, 2004. On April 26, 2004 (dated April 18, 2004), Applicant filed a petition to withdraw the holding of abandonment, asserting that he timely filed a response via Express Mail mailing label number ER150654105US on September 18, 2003. However, in a decision mailed on May 12, 2004, the petition was dismissed because applicant did not include a copy of the correspondence alleged to have been filed on September 18, 2003, bearing a copy of Express Mail mailing label number ER150654105US. Applicant filed a renewed petition on June 3, 2004 (dated May 28, 2004), including the papers purported to have been filed on September 18, 2003. However, the papers did not include a copy of the Express Mail mailing label number affixed thereon. Accordingly, the renewed petition was dismissed in a decision mailed on June 28, 2004. Applicant filed a renewed petition once again on August 11, 2005, this time supplying a copy of his response bearing the Express Mail mailing label.

However, because the response did not appear to be a true copy, the petition was dismissed in a decision mailed on January 11, 2006.

With the instant petition, petitioner has paid the petition fee and made the proper statement of unintentional delay. The required reply was previously filed on June 3, 2004.

The matter is being forwarded to Group Art Unit 3727 for consideration of the response filed June 3, 2004.

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

Cliff by

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 8

FARJAMI & FARJAMI LLP
26522 LA ALAMEDA AVENUE, SUITE 360
MISSION VIEJO, CA 92691

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OFFICE OF PETITIONS

In re Application of	:	
Yang et al.	:	
Application No. 09/922,536	:	ON PETITION
Filed: August 3, 2001	:	
Attorney Docket No. 0180229	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 21, 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 Corrected Application Papers (Notice) mailed September 12, 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 November 13, 2001. A Notice of Abandonment was mailed on May 28, 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 the Office of Initial Patent Examination for further processing.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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THOMPSON E. FEHR
SUITE 300
GOLDENWEST CORPORATE CENTER
5025 ADAMS AVENUE
OGDEN UT 84403

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OFFICE OF PETITIONS

In re Application of	:	
Stanley J. Checketts	:	
Application No. 09/922,548	:	ON PETITION
Filed: August 3, 2001	:	
Attorney Docket No. PSSAIS	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 20, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee, publication fee and the formal drawings in a timely manner in reply to the Notice of Allowance and the Notice of Allowability mailed March 8, 2004, which set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 9, 2004.

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

This matter is being referred to the Office of Patent Publication to oversee review of the drawings filed on September 20, 2004.

Karen Creasy

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

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

In re Application of
Karp et al.
Application No. 09/922,551
Filed: August 2, 2001
Attorney Docket No. 10980981-1

ON PETITION

This is a decision on petition to withdraw the holding of abandonment under 37 CFR 1.181 filed August 9, 2004.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing 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.

This application was held abandoned November 14, 2001 for failure to timely reply to the Notice to File Corrected Application Papers mailed on September 13, 2001. The Notice to File Corrected Application Papers set a two (2) month extendable time period for reply. A Notice of Abandonment was mailed July 6, 2004.

Petitioner asserts that a reply to the Notice to File Corrected Application Papers was submitted on November 9, 2001. As evidence, petitioner has submitted a copy of the reply which contains four (4) sheets of drawings, and a certificate of mailing dated November 9, 2001 pursuant to 37 CFR 1.8. Petitioner has also provided a copy of a postcard receipt with an Office stamp of January 8, 2002.

Pursuant to 37 CFR 1.8, correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the

correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

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

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

Petitioner has failed to meet requirement (3). Petitioner has established that the correspondence was received in the Office on January 8, 2002 via the postcard receipt. However since the date on the postcard receipt is not within the shortened statutory time period of reply, petitioner has failed to establish that the correspondence was timely mailed.

Petitioner must provide a statement which attest on personal knowledge that the documents were mailed on November 9, 2001. As stated in 37 CFR 1.8(b)(3) the statement that attests to the previous timely mailing or transmission of the correspondence must be on a personal knowledge basis, or to the satisfaction of the Director of the USPTO. If the statement attesting to the previous timely mailing is not made by the person who signed the Certificate of Mailing (i.e., there is no personal knowledge basis), then the statement attesting to the previous timely mailing should include evidence that supports the conclusion that the correspondence was actually mailed (e.g., copies of a mailing log establishing that correspondence was mailed for that application). A review of the certificate of mailing shows that it was executed by Ana Jesus. A statement has not been provided by Ms. Jesus nor has Attorney Knight provided a sufficient statement.

To the extent petitioner is unable to provide a statement, a two month extension of time fee will be charged to the deposit account before the holding of abandonment can be withdrawn.

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

By mail:

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

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.)

U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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P.O. Box 1450
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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

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OFFICE OF PETITIONS

In re Application of
Karp et al.
Application No. 09/922,551
Filed: August 2, 2001
Attorney Docket No. 10980981-1

ON PETITION

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181 filed January 9, 2007.

The petition to withdraw the holding of abandonment is **GRANTED**.

This application was held abandoned November 14, 2001 for failure to timely reply to the Notice to File Corrected Application Papers mailed on September 13, 2001. The Notice to File Corrected Application Papers set a two (2) month extendable time period for reply. A Notice of Abandonment was mailed July 6, 2004.

Petitioner asserts that a reply to the Notice to File Corrected Application Papers was submitted on November 9, 2001. As evidence, petitioner has submitted a copy of the reply which contains four (4) sheets of drawings, and a certificate of mailing dated November 9, 2001 pursuant to 37 CFR 1.8. Petitioner has also provided a copy of a postcard receipt with an Office stamp of January 8, 2002.

Petitioner has established that the correspondence was received in the Office on January 8, 2002 via the postcard receipt. However since the date on the postcard receipt is not within the shortened statutory time period of reply, a two month extension of time fee ($400) will be charged to deposit account 08-2025. It is noted that a general authorization was provided on filing with the transmittal letter.

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 (571) 272-3215.

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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Paper No. 13

AUDLEY A. CIAMPORCERO JR.
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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AUG 25 2003

OFFICE OF PETITIONS

In re Application of
Richard Apodaca, et al.
Application No. 09/922,631
Filed: August 6, 2001
Attorney Docket No. ORT-1473

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 19, 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 July 30, 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 October 31, 2002.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Frances Hicks at (703)305-8680.

The application file is being forwarded to Technology Center 1600, Art Unit 1626.

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

Frances Hicks
Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Paul J. Skwierawski
ANTONELLI, TERRY, STOUT &
KRAUS, LLP
1300 North Seventeenth Street, Suite 1800
Arlington, VA 22209

In re Application of:	)	
PARVATHALA, et al.	)	
Application No. 09/922,639	)	**DECISION ON REQUEST FOR**
Filed: August 7, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: TOOL FOR GENERATING A RE-GENERATIVE FUNCTIONAL TEST	)	

This is a decision on the Request To Withdraw from Representation filed July 2, 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 July 2, 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

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

cc: Anne Richards
SCHWEGMAN, LUNDBERG, WOESSNER &
KLUTH P.A.
1600 TCF Tower
121 S. 8th Street
Minneapolis, MN 55402

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

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

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JUL 0 3 2002

OFFICE OF PETITIONS

In re Application of
Laskey, et al.
Application No. 09/922,652
Filed: August 7, 2001
Title: Detection of Dysplastic or Neoplastic Cells Using Anti-MCM2 Antibodies

DECISION ON PETITION

This is a decision on the petition, filed March 25, 2002, to accord the above-identified application a filing date of August 7, 2001, with pages 58, 59, 61, 67 and 68 of the specification as part of the original application disclosure. This petition is properly treated under §1.53(e)(2)[1].

Application papers in the above-identified application were filed on August 7, 2001. However, on March 1, 2002, the Initial Patent Examination Division mailed applicants a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, pages 58, 59, 61, 67 and 68 of the specification appeared to have been omitted from the application. This Notice corrected the previously sent and withdrawn Notice mailed October 26, 2001.

In response, applicant timely filed the instant petition. Petitioner asserts that the allegedly omitted pages were in fact deposited in the USPTO with the non-provisional application papers on August 7, 2001; and accordingly, requests refund of the petition fee. In support thereof, petitioner submits a copy of their return postcard receipt. Petitioner further argues that the application as filed on August 7, 2001 was amended to incorporate by reference the text of the parent application Serial No. 09/175,947 (now U.S. Patent No. 6,303,323), which includes the subject matter of the allegedly omitted pages 58, 59, 61, 67 and 68. Petitioner submitted on petition replacement pages 58, 59, 61, 67 and 68.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of

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[1] §1.53(e) Failure to meet filing date requirements.
... (2) Any request for review of ... a notification that the original application papers lack a portion of the specification or drawing(s), must be by way of a petition pursuant to this paragraph accompanied by the fee set forth in §1.17(h). In the absence of a timely (§1.181(f)) petition pursuant to this paragraph, the filing date of an application in which the applicant was notified of a filing error pursuant to paragraph (e)(1) of this section will be the date the filing error is corrected.

receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the Office of Initial Patent Examination (OIPE) on August 7, 2001; 2) it specifically identifies the items being filed, including "88 Pages Specification" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the items denoted, including the 88 pages of specification, were filed on August 7, 2001.

The application papers already considered received in the Office on August 7, 2001, were reviewed along with the missing pages of specification submitted on petition. These papers together constitute the items described on the postcard receipt as 88 Pages Specification. Petitioner has shown that pp. 58, 59,61, 67 and 68 of the specification were among the items present in the application on the date of deposit and should be included in the original application papers.

Moreover, a review of the application as filed reveals that it contains a transmittal sheet with a proper incorporation by reference statement,[2] as alleged.

Accordingly, the petition is **GRANTED**.

Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 14-1140, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of August 7, 2001, using the application papers received in the Office on that date and the missing pages of specification, pp . 58, 59,61, 67 and 68, resupplied on petition filed March 25, 2002.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries specific 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

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[2] A proper incorporation by reference statement can be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. See MPEP 201.06(c).

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Alexandria, VA 22313-1450
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Paper No. 11

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

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SEP 10 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Grant et al. :
Application No. 09/922,658 :
Filed: August 6, 2001 :
Attorney Docket No. ORT 1483 :

This is a decision on the petition under 37 CFR 1.137(a), filed August 17, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any 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.

Facts:

A restriction Notice requiring and election by applicant was mailed on November 12, 2002, which set an extendable one month period of time to respond.

A response, if received, was never entered into the file, and the application was considered abandoned as of December 13, 2002.

On June 16, 2003, a copy of the prior election allegedly filed on January 10, 2003, was sent by facsimile transmission to the examiner.

A telephone interview summary sheet completed by the examiner on June 16, 2003, states, "Advised the attorney that the return card was not stamped by the Patent Office and that a Petition to revive should be filed." The interview sheet indicates the examiner spoke with attorney Myra H. McCormack.

A Notice of Abandonment and a copy of the interview summary sheet were sent to petitioner at the address of record on June 17, 2003.

The petition states the Notice of Abandonment, and presumably the interview summary sheet, were not received.

Law:

A grantable petition under 37 CFR 1.137(a) must be accompanied by a copy of the required reply, the petition fee, and 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.

Analysis:

The reply:

A copy of the reply was not filed with the petition. However, a copy of the reply was filed on June 17, 2003. Although the June 17, 2003 reply *may* be legally sufficient, the reply does contain a small ambiguity. The reply states that petitioner elects claims 1-22, 44, and 45. However, handwritten on another sheet is the notation, "Elected 1-28 & 44-45." Petitioner should submit a new response clearly electing claims to prosecute.

The fee:

The fee for a petition under 37 CFR 1.137(a) is $110. As will be discussed later, Office records indicate authorization to charge $110 to petitioner's deposit account for a one month extension of time on January 21, 2003. Since the record fails to include any written authorization to charge the fee, the fee will be considered refundable and the Office will use the $110 for the petition fee. It should be noted that, if a request for reconsideration under 37 CFR 1.137(a) is granted, petitioner will *not* need to submit $110 for an extension of time since the application will be considered abandoned as of December 13, 2002, although revived subsequently.

The showing of unavoidable delay:

Two main issues exist.

The first issue:

The first issue concerns the adequacy of the evidence concerning the original submission of the response to the restriction requirement.

As stated previously, Office financial records do indicate $110 was charged to petitioner's deposit account for a one month extension of time on January 21, 2003.

Petitioner has submitted a copy of the papers allegedly filed on January 21, 2003. The papers bear a certificate of mailing date of January 10, 2003. The certificate of mailing is signed by attorney Myra H. McCormack.

37 CFR 1.8(b) provides that when correspondence satisfies 37 CFR 1.8(a), but was not received by the Patent and Trademark Office, the correspondence will be considered timely if:

(1) petitioner informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence.
(2) petitioner supplies an additional copy of the previously mailed or transmitted correspondence and certificate,
(3) the petitioner includes a statement which attests on a personal knowledge basis, or to the satisfaction of the Commissioner, to the previously timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement, and
(4) the Office may require additional evidence to determine if the correspondence was timely filed.

As to (3), the petition is signed by Hesna Pfeiffer, not Ms. McCormack. A statement by Myra H. McCormack, the individual with personal knowledge, should be submitted verifying that she did in fact mail the reply after she completed the Certificate of Mailing.

The second issue:

The record fails to establish the petition was timely filed. An applicant may not delay the filing of a petition once applicant discovers a problem exists.

37 CFR 1.137(a) requires the entire delay from the date of abandonment until the filing of a grantable petition to be unavoidable.

37 CFR 1.181(f) states in part, "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."

The record indicates that petitioner, via attorney McCormack, was aware of the existence of a problem with the receipt of the reply as early as June 16, 2003. The examiner's interview summary sheet states the examiner informed the attorney "that a Petition to revive should be filed." A petition was not filed until approximately 14 months later.

In addition to oral notification, the Office mailed a Notice of Abandonment on June 17, 2003. Petitioner alleges the Notice of Abandonment was never received.

In the absence of any irregularity in the mailing of the Office action, there is a strong presumption that the Office action, such as the Notice of Abandonment, was properly mailed and received. In order to overcome this presumption, a petition alleging non-receipt of an Office action must:
(1) include a statement from practitioner stating that the Office action was not received,
(2) attest that a search of the file jacket has been made,
(3) attest that a search of all relevant docket records has been made,
(4) include a copy of the docket record where the Office action would have been entered had it been received, and
(5) include any additional information which may be required by the Commissioner.

The instant petition fails to address items (2), (3), and (4) above.

Conclusion:

The instant record fails to establish that relief under 37 CFR 1.137(a) is proper. Therefore, the petition must be dismissed.

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

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

By 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 (703) 306-5683.

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

Hung Chang Lin
8 Schindler Court
Silver Spring, MD 20903

In re Application of: Bily Wang et al. Serial No.: 09/922,688 Filed: August 7, 2001 Attorney Docket No.: Harvatek-9030	: : : : :	DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

The letter submitted on December 18, 2003 entitled ABANDONMENT/APPEAL is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181.

The petition is **DENIED**.

A Notice of Abandonment was mailed on December 4, 2003. The Notice of Abandonment stated that the application was abandoned for failure to timely file a proper reply to the Office action mailed on January 15, 2003.

Petitioner notes that an Appeal Brief originally filed on September 3, 2002 was resubmitted on February 24, 3003 and received at the USPTO on March 3, 2003. However, the resubmission of the previously filed Appeal Brief was not a proper reply to the final Office action mailed on January 15, 2003.

Irregardless of the fact that between the time the Appeal Brief was originally filed and the time it was resubmitted, the amendment filed on October 20, 2002 cancelled claims 1-6 and 13 and amended claims 7, 9, 14, 16 and 17, an appeal brief without a notice of appeal is not a proper reply to a final Office action.

RULES AND REGULATIONS

37 C.F.R. § 1.113(a) states in pertinent part:

On the second or any subsequent examination or consideration by the examiner the rejection or other action by the examiner may be made final, whereupon *applicant's . . . reply is limited to appeal in the case of rejection of any claim (§ 41.31 of this title)*, or an amendment as specified in § 1.114 or § 1.116. (Italics added).

37 C.F.R. § 41.31(a)(1) states:

Every applicant, any of whose claims has been twice rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.

37 C.F.R. § 41.37(a)(1) states:

Appellant must file a brief under this section within two months from the date of filing the notice of appeal under 37 C.F.R. § 41.31.

CONCLUSION

As indicated in the above rules, an appeal is begun by the filing of a notice of appeal not by the filing of an appeal brief. The Notice of Appeal filed on September 3, 2002 began the appeal of the final Office action mailed May 29, 2002, it had nothing to do with an appeal of the final Office action mailed January 15, 2003.

Once the six month maximum statutory period expired without a proper reply being filed under 37 C.F.R. § 1.113(a) to the final Office action mailed January 15, 2003, this application became abandoned by operation of law under 35 U.S.C. 133. The effective date of the abandonment was three months from the final Office action mailed January 15, 2003.

Accordingly, the petition is **DENIED** and the application remains abandoned. Applicant may wish to consider the filing of a petition to revive under 37 C.F.R. 1.137.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.

Sharon A. Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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P.O. Box 1450
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Paper No. 10

JOHN S. PRATT, ESQ
KILPATRICK STOCKTON, LLP
1100 PEACHTREE STREET
SUITE 2800
ATLANTA, GA 30309

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APR 27 2004

OFFICE OF PETITIONS

In re Application of
Gregg Freishtat, et al.
Application No. 09/922,753
Filed: August 6, 2001
Attorney Docket No. 46883/262503

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed March 23, 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 month publication country on October 6, 2001. 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 August 5, 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 returned to Technology Center Art Unit 3627 for further examination.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/17/10

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 09922759 Patent No.: 6788312

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: The ~~change~~ correction for col. 1, line 11 of the specification is approved.
The corrections to/ 35 and col. 36 in the claims are NOT approved because there are no col. 35 and col. 36 in the Patent.

KEE M. TUNG
SUPERVISORY PATENT EXAMINER

AU 2628

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

SPE

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Date Mailed : 03/04/10

Patent No. : 6788312 B1
Patent Issued : 09/07/04
Docket No. : **NVIDP052/P000358**

Re: Request for Certificate of Correction

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

Respecting the alleged errors in the documents filed on 01/12/10; please see attachments. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

In view of the foregoing, your request in this matter is hereby Approved-in-Part.

A certificate of correction will be issued to correct the remaining errors noted in your request.

Lamonte M. Newsome

Lamonte M. Newsome
For Mary Diggs, Supervisor
Decisions & Certificates
Of Correction Branch
(703) 305-8309 or (703) 756-1574

Zilka-Kotab, PC
P.O. BOX 721120
SAN JOSE CA 95172-1120

LMN

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 02/17/10

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 09922759 Patent No.: 6788312

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (C of C)
Randolph Square 9D40-D
Palm Location 7580

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

Lamonte Newsome
Certificates of Correction Branch
703-756-1574

Thank You For Your Assistance

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

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

Comments: The ~~change~~ correction for col. 1, line 11 of the specification is approved.
The corrections to col 35 and col. 36 in the claims are NOT approved because there are no col. 35 and col. 36 in the Patent.

KEE M. TUNG
SUPERVISORY PATENT EXAMINER

AU 2628

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ROYLANCE ABRAMS BERDO & GOODMAN
1300 19TH STREET, N.W., SUITE 600
WASHINGTON, DC 20036

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JUL 29 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Avner Pierre Badehi	:	
Application No. 09/922,770	:	
Filed: August 7, 2001	:	
Attorney Docket No. 42043	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 19, 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 non-final Office action mailed December 1, 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 March 2, 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 an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of December 1, 2004 is accepted as having been unintentionally delay.

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

This matter is being referred to Technology Center AU 2813.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

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MAR 1 1 2009

OFFICE OF PETITIONS

Henry I. Schanzer
29 Brookfall Road
Edison, NJ 08817

In re Patent No. 6,731,019 :
Issue Date: May 4, 2004 :
Application No. 09/922,877 : ON PETITION
Filed: August 6, 2001 :
Patentee(s): Joseph R. Burns, et. al. :

This is a decision on the petition under 37 CFR 1.378(c), filed on July 24, 2008, to accept the delayed payment of a maintenance fee for the above-identified patent.

Since petitioner has demonstrated to the satisfaction of the Commissioner that the delay in timely paying the maintenance fee was unintentional, the petition under 37 CFR 1.378(c) is hereby **GRANTED**.

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

This patented file is being forwarded to Files Repository.

Telephone inquiries 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, DC 20231
www.uspto.gov

Paper No. 5

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MAR 2 7 2003

Technology Center 2600

BAKER & MCKENZIE
805 THIRD AVENUE
NEW YORK NY 10022

In re Application of
Rajiv Laroia et al
Application No. 09/922,885
Filed: August 6, 2001
For: **SYNCHRONIZATION OF A PILOT ASSISTED CHANNEL ESTIMATION ORTHOGONAL FREQUENCY DIVISION MULTIPLEXING SYSTEM**

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on March 10, 2003.

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 and agents of record in this application are removed from record.

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.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4701

cc: Ms. Susan Curry
Lucent Technologies, Inc.
101 Crawfords Corner Road, Room 3J-220
Holmdel, NJ 07733-3030

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
TC 3600

Crowell & Moring, L.L.P
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300

Paper No. 6

In re application of
Takao Kojima et al.
Application No. 09/922,917
Filed: August 7, 2001
For: PEDAL DEVICE FOR A VEHICLE AND AUTOBILE USING THE SAME

DECISION ON PETITION TO RESET A PERIOD FOR REPLY

This is in reply to the Petition to Reset a Period for Reply Due to Late Receipt of an Office action, received in the Patent and Trademark Office on March 19, 2003.

The petition is **DISMISSED**.

Applicant argues that the Office action having a mail date of December 2, 2002 arrived in an envelope bearing a postmark with a [March?] 28, 2003 date. Applicant asks that the period for response be reset to reflect the postmark date of the envelope containing the Office action.

Such a petition may be granted if the following criteria are met: (A) the petition is filed within 2 weeks of the date of receipt of the USPTO action at the correspondence address, (B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days, and (C) the petition includes (1) evidence showing receipt (e.g., copy of the USPTO action having the date of receipt of the action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the USPTO action showing the postmark date, and (3) a statement setting forth the date of receipt of the action at the correspondence address and stating that the action was received in the postmarked envelope.

The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been delayed after receipt rather than a conclusion that the Office action was delayed in the mail or in the Office.

A review of the file record reveals that an Office action was mailed to the address of record on December 2, 2002. The petition alleges that that Office action was not received in the office of the attorney until on or about April 2, 2003. The petition also provides a copy of the envelope in which the Office Action was received, containing a postmark showing an actual mailing date of [March?] 28, 2003.

The petition lacks the evidence required in Item (C)(1), above. Specifically, the copy of the USPTO action does not have the date of receipt of the action at the correspondence address stamped thereon. A further review of the file record reveals that the correspondence address listed in the original declaration was to Crowell & Moring LLP at Suite 700, 1200 G Street, N.W., Washington, DC 20005. This was the correspondence address of record. A change of correspondence address was filed on March 27, 2003 which directed further communications from the Office to be sent to Crowell & Moring, LLP at Intellectual Property Group, P.O. Box 14300, Washington, DC 20044-4300. Because the change in correspondence address was not filed with the Office prior to the December 2, 2002 communication, the Office action sent to the applicant from the Office was properly sent to the address of record; the 1200 G Street, N.W. address.

It is further noticed that the correspondence address on the copy of the first sheet of the Office action submitted as evidence is to Crowell & Moring, LLP at P.O. 14300, Washington, D.C. 20044-4300. However, the file copy of the Office action indicates that it was sent to the 1200 G Street address. While MPEP 710.06 does give an applicant the ability to petition to show that a communication from the Patent Office was received late, this is predicated on the fact that the attorney was at the correspondence address to receive the communication. Thus, applicant needs to show late receipt of the communication at the 1200 G street address, the address to which the Office action was mailed.

The time period for response to the Office action of December 2, 2002 continues to run 1 month from that date. The application is being returned to the Central Files holding area of TC 3600 to await applicant's response to that Office action.

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.

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

KJD/tpl: 5/1/03

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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MAILED

JUN 3 0 2003

Office of the Director
Group 3600

Crowell & Moring, L.L.P
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300

In re application of
Takao Kojima et al.
Application No. 09/922,917
Filed: August 7, 2001
For: PEDAL DEVICE FOR A VEHICLE AND AUTOBILE USING THE SAME

DECISION ON PETITION TO RESET A PERIOD FOR REPLY

This is in reply to applicants' renewed petition to reset a period for reply due to late receipt of an Office action, received in the Patent and Trademark Office on June 2, 2003 and supplemented on June 19, 2003.

The petition is **GRANTED**.

A review of the file records reveals that an Office action, setting a one-month shortened statutory period for reply, was mailed to applicants on December 2, 2002. Since no timely filed response has been received and the six-month statutory time period for reply expired on June 2, 2003, the application is abandoned, although a Notice of abandonment has yet been mailed.

A petition to reset a period for reply was filed on March 19, 2003. That petition was dismissed in a decision mailed on May 2, 2003 wherein it was held that the petition lacked evidence showing receipt of the Office action at the correspondence address. Furthermore, it was also noted that the correspondence address on the copy of the Office action provided in the petition is different than that of the copy in the file records.

In the renewed petition, applicants argue that the change in correspondence address request received on March 27, 2003 is a copy of a request that was filed on August 7, 2002. A copy of that original change in correspondence address request was received on June 19, 2003. Included with the copy of the request is a postcard bearing a USPTO Mail Room receipt dated August 7, 2002. This is acceptable evidence of a timely submission of a change in correspondence address.

Applicants also argue that the copy of the Office action bears a "RECEIVED Dec 23, 2002 GROUP 3600" stamp and allege that the Office action may have been returned to the Office and remailed from there to the P.O. Box 14300 address. This appears to be the reason for the late receipt by applicant of the Office communication. Therefore, the holding of abandonment is withdrawn.

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. Since applicants have a copy of the December 2, 2002 Office action, the Office action will not be remailed. However, the period for reply will be reset to run one (1) month from the date of this decision.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/tpl: 6/20/03

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COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.go

Edward Wise
MCDERMOTT, WILL & EMERY
600 13th, N.W.
Washington DC 20005-3096

JUN 16 2004

In re Application of:	:	
Kosaka, *et al.*	:	DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT
Application No. 09/922,926	:	
Filed: August 07, 2001	:	
Attorney Docket No.: 44085-154	:	

This is a decision on the petition filed November 06, 2003, requesting withdrawal of the holding of abandonment of the above-identified application. A petition fee is not required.

The petition is **granted.**

The application was held abandoned for the applicant's apparent failure to timely respond to the Office action mailed March 12, 2002. A Notice of Abandonment was mailed on August 23, 2003.

Petitioner asserts that a response, including, *inter alia,* an amendment and a petition for a three-month extension of time, was timely filed in the U.S. Patent and Trademark Office (PTO) on September 11, 2002. To support this assertion, petitioner has submitted a copy of the response to the Office action and a copy of a return postcard that properly identifies and acknowledges receipt of the response by the United States Patent and Trademark Office (PTO) on September 11, 2002.

A review of the application file record reveals that the above-identified response is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Additionally, the application file fee record reveals that petitioner's deposit account was charged a $920.00 extension of time fee on September 12, 2002. The mailroom date of the authorization to charge the fee is September 11, 2002. As such, the evidence provided indicates that the response was timely received in the PTO on September 11, 2002, but lost after receipt thereof.

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

The application file is being forwarded to the Technology Center 2800 support staff for entry of the response. From there, the application will be forwarded to the examiner for appropriate action.

Inquiries regarding this decision should be directed to Lissi Mojica Marquis at (571) 272-1596.

Richard K. Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

Mail Date: 04/21/2010

Applicant	: James G. Gatto	: DECISION ON REQUEST FOR
Patent Number	: 7661590	: RECALCULATION of PATENT
Issue Date	: 02/16/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/922,935	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/07/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **274** 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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FITCH EVEN TABIN & FLANNERY
120 SOUTH LASALLE STREET
SUITE 1600
CHICAGO, IL 60603-3406

Mail Date: 05/18/2010

Applicant : James G. Gatto
Patent Number : 7661590
Issue Date : 02/16/2010
Application No : 09/922,935
Filed : 08/07/2001

: NOTICE CONCERNING IMPROPER
: CALCULATION OF PATENT TERM
: ADJUSTMENT BASED UPON USPTO
: IMPROPERLY MEASURING REDUCTION
: PERIOD UNDER 37 CFR 1.704(c)(10).

The United States Patent and Trademark Office (USPTO) discovered that in processing the recent recalculation decisions mailed in response to patentee's filed Request for Recalculation of Patent Term Adjustment in view of Wyeth, the USPTO improperly measured the reduction period for reductions under 37 CFR 1.704(c)(10). Pursuant to 37 CFR 1.704(c)(10), patentee's reduction begins on the date of filing the amendment under 37 CFR 1.312 ("1.312 amendment") or other related paper and ends on the date that the Office mails a response to the filing of the 1.312 amendment or other paper. It has been discovered that during the recalculation, the calculation failed to the limit the reduction to the mail date of the response to the 1.312 amendment or other paper. Accordingly, patentee's reductions were greater than warranted.

This notice **VACATES** the previous GRANTED request for recalculation and provides patentee with a revised GRANTED recalculation.

The patent term adjustment has been determined to be **306** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (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** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this PTA 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 PTA 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 of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken 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).

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Paper No. 10

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OFFICE OF PETITIONS

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W., SUITE 600
WASHINGTON, DC 20005-3934

In re Application of	:	
Peisker et al.	:	
Application No. 09/922,939	:	DECISION GRANTING
Filed: August 7, 2001	:	PETITION
Attorney Docket No. 1533.3150001/SRL/KYP	:	

This is a decision on the petition filed January 24, 2003, to accord the above-identified application a filing date of August 7, 2001.

On August 7, 2001, the application was filed.

On January 9, 2003, the Office of Initial Patent Examination mailed a Notice stating that drawings were not present and that a filing date had not been accorded and the filing date would be the date of receipt of drawings.

In response, the present petition was filed alleging that a drawing was deposited on August 7, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "1 sheet of drawings (Figure 1)" on August 7, 2001.[1] Petitioner has also submitted a copy of the missing documentation- 1 sheet of drawing.

Upon review of the record, Figure 1, deposited on August 7, 2001, has not been located. However, the evidence is convincing that the application papers deposited on August 7, 2001 included Figure 1, and that Figure 1 was subsequently misplaced in the PTO. Therefore, the application is complete and entitled to a filing date of August 7, 2001.

In view of the above, the petition is **granted**. The copy of Figure 1 submitted with the petition will be used for examination purposes.

A refund of the petition fee will be scheduled.

The Notice mailed January 9, 2003, was sent in error and is hereby vacated.

Pursuant to 37 CFR 1.84(u): "Where only a single view is used in an application to illustrate the claimed invention, it must not be numbered and the abbreviation 'FIG.' must not appear." Therefore, applicants should file a preliminary amendment to delete the label "Figure 1" from the

[1] Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

one (1) sheet of drawings, as well as any reference to "Figure 1" in the specification prior to the first action on the merits.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 7, 2001, using the application papers filed on August 7, 2001, and the copy of one sheet of drawings filed on January 24, 2003.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

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ALBIHNS STOCKHOLM AB
BOX 5581, LINNEGATAN 2
SE-114 85 STOCKHOLM; SWEDEN
STOCKHOLM SE SWEDEN

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JUN 04 2007

OFFICE OF PETITIONS

In re Application of :
Lorenz Poellinger et al :
Application No. 09/922,958 : DECISION ON PETITION
Filed: August 7, 2001 :
Attorney Docket No. 65731-76121 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 16, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed March 3, 2006, which set a shortened statutory period for reply of three (3) months. A two month extension of time was obtained under the provisions of 37 CFR 1.136(a).[1] Accordingly, the application became abandoned on August 4, 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 a request for continued examination, $395 filing fee, and submission as required by 37 CFR 1.114, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Office action of March 3, 2006 is accepted as being unintentionally delayed.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63,

[1] There is no indication that the requested two month extension of time fee was charged to the authorized deposit account. Accordingly, the two month extension of time fee for the amendment filed on July 6, 2006 will be charged to deposit account No. 50-1249, which is the account to which the fee was authorized.

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 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.

This application is being referred to Technology Center AU 1642 for processing the request for continued examination and for appropriate action in the normal course of business on the submission under 37 CFR 1.114 received November 16, 2006.

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

cc:

Todd E. Garabedian (Dkt. No. 102912-200)
Wiggin and Dana LLP
One CityPlace
185 Asylum Street
Hartford, CT 06103

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P. O. BOX 19928
ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 7,090,735 :
Issue Date: August 15, 2006 :
Application No. 09/922,964 :
Filed: August 6, 2001 :
Attorney Docket No. 1110-WO :

This is a decision on the petition under 37 CFR 3.81(b), filed July 3, 2006, to correct the assignee's name and address on the Fee(s) Transmittal form PTOL-85(b) so that the patent will issue with the correct assignee data.

The request is **GRANTED**.

Petitioner states that the correct assignee's name is BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, LLC, NASHVILLE, TENNESSEE and that an incorrect assignee's name and address were included on the Part B - Fee(s) Transmittal form at the time of payment of the issue fee. Accordingly, petitioner requests that the patent issue to BRIDGESTONE/FIRESTONE NORTH AMERICAN TIRE, LLC, NASHVILLE, TENNESSEE.

Where the assignee data was submitted incorrectly on the Part B – Fee(s) Transmittal form, the appropriate avenue of relief is by way of a request under 37 CFR 3.81(b). It is noted that, despite the fact that no action on the request had been taken prior to issuance of this application into a patent, the patent issued in the name and address as set forth in this request. Therefore, as the patent has issued with the corrected assignee's name and address, no Certificate of Correction is now necessary to correct the front page of the Letters Patent.

As this application has issued into a patent with the desired assignee's name and address, no further action is necessary.

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

Frances Hicks
Petitions Examiner
Office of Petitions

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No:	09/922,978
Applicants:	Kazuhisa Yamamoto et al.
Filed:	August 6, 2001
Title:	OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE
T.C./A.U.:	2828
Examiner:	Leon Scott, Jr.
Confirmation No.:	1750
Docket No.:	YAO-3750US1

PETITION UNDER 37 C.F.R. § 1.181
FOR ACKNOWLEDGMENT OF PRIORITY DOCUMENT AND
FOR CONSIDERATION OF INFORMATION DISCLOSURE STATEMENT

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

First, this Petition is to request the issuance of a Supplemental Notice of Allowability which acknowledges receipt of Applicants' priority document. The Notice of Allowability (mailed on May 25, 2004) did not acknowledge receipt of the priority document. The priority document was filed in the parent Application No. 08/973,380 on March 16, 1998 (copy of transmittal enclosed).

Second, Applicants filed Information Disclosure Statements (IDS's) on August 6, 2001, April 25, 2003, and August 27, 2003. Copies of the IDS's, as filed, are enclosed. The IDS's, although properly filed, have not been considered.

The Examiner is respectfully requested to consider the originally filed IDS's and to return the initialed Form 1449's to the undersigned.

Copies of the IDS's and return postcards evidencing receipt of the IDS's by the PTO are enclosed.

It is respectfully requested that issuance of the above identified application be suspended until acknowledgement of the priority documents has been made and the IDS's have been considered.

Respectfully submitted,

Daniel N. Calder

Daniel N. Calder, Reg. No. 27,424
Attorney for Applicants

DNC/lcf

Attachments: Notice of Allowability;
Copies of Information Disclosure Statements and postcards;
Copies of Transmittal Forms and postcards from parent application

Dated: June 18, 2004

P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

The Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Mail Stop Issue Fee, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

June 18, 2004

Lorraine C. Fox Lorraine C. Fox

LCF_I:\YAO\3750US1\PETITION-01.DOC

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

PTO/SB/21 (02-04) (AW 02/2004)
Approved for use through 7/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/922,978
Filing Date	August 6, 2001
First Named Inventor	Kazuhisa Yamamoto
Art Unit	2828
Examiner Name	Leon Scott, Jr.
Attorney Docket No.	YAO-3750US1

ENCLOSURES *(Check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment/Reply
  - ☐ After Final
  - ☐ Affidavits/Declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
  - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☒ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation, Change of Correspondence Address
- ☐ Terminal Disclaimer
- ☐ Request for Refund
- ☐ CD, Number of CD(s) _____
- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to Group **(Appeal Notice, Brief, Reply Brief)**
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) (please identify below): Copies of transmittals and postcards from parent application; Copies of IDS's and postcards previously submitted; Copy of Notice of Allowability; Postcard

Remarks:

SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm or Individual Name	Daniel N. Calder	*Registration No. (Attorney/Agent)*	27,424
Signature	Daniel N. Calder		
Date	June 18, 2004		

CERTIFICATE OF TRANSMISSION / MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this date:

Typed or printed name	Lorraine C. Fox		
Signature	Lorraine C. Fox	*Date*	June 18, 2004

This collection of information is required by 37 CFR 1.5. 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 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Office, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, ALEXANDRIA, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

DNC/LCF

YAO-3750US1

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NOTICE OF ALLOWANCE AND FEE(S) DUE

05/25/2004

Ratner & Prestia
P.O. Box 980
Valley Forge, PA 19482

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MAY 27 2004
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EXAMINER
SCOTT JR, LEON

ART UNIT	PAPER NUMBER
2828	

DATE MAILED: 05/25/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,978	08/06/2001	Kazuhisa Yamamoto	YAO-3750US1	1750

TITLE OF INVENTION: OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE

Issue + pub fee (3mo) 8/25/04/LCF

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	$1330	$300	$1630	08/25/2004

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

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

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PTOL-85 (Rev. 11/03) Approved for use through 04/30/2004.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,978	08/06/2001	Kazuhisa Yamamoto	YAO-3750US1	1750

7590 05/25/2004

Ratner & Prestia
P.O. Box 980
Valley Forge, PA 19482

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

EXAMINER
SCOTT JR, LEON

ART UNIT	PAPER NUMBER
2828	

DATE MAILED: 05/25/2004

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 597 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 597 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system (http://pair.uspto.gov).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (703) 305-1383. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

PTOL-85 (Rev. 11/03) Approved for use through 04/30/2004.

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

Notice of Allowability	Application No.	Applicant(s)
	09/922,978	YAMAMOTO ET AL.
	Examiner	**Art Unit**
	Leon Scott, Jr.	2828

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to *pre-Amend't filed 8/06/01*.

2. ☒ The allowed claim(s) is/are *50-54 and 78-80*.

3. ☒ The drawings filed on *06 August 2001* are accepted by the Examiner.

4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a) ☐ All b) ☐ Some* c) ☒ None of the:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____ .
      3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

   * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
   (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
   (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

   Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____ .
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

Leon Scott, Jr.
Primary Examiner
Art Unit 2828

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

Notice of References Cited

Application/Control No.	Applicant(s)/Patent Under Reexamination
09/922,978	YAMAMOTO ET AL.
Examiner: Leon Scott, Jr.	Art Unit: 2828

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
*	A	US-6,654,529	11-2003	Kawaguchi et al.	385/122
*	B	US-6,490,309	12-2002	Okazaki et al.	372/75
*	C	US-6,333,943	12-2001	Yamamoto et al.	372/43
*	D	US-6,188,705	02-2001	Krainak et al.	372/32
*	E	US-5,615,042	03-1997	Delacourt et al.	359/338
*	F	US-5,990,925	11-1999	Sousa et al.	347/256
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.

FORM PTO-1390 (Modified) (REV 10-95) U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 U.S.C. 371

ATTORNEY'S DOCKET NUMBER
0-3750

U.S. APPLICATION NO. (IF KNOWN, SEE 37 CFR 1.5)
To Be Assigned

INTERNATIONAL APPLICATION NO.	INTERNATIONAL FILING DATE	PRIORITY DATE CLAIMED
PCT/JP96/01472	**30MAY96 (30.05.96)**	**02JUN95(02.06.95); 04JUL95(04.07.95)**

TITLE OF INVENTION
OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE

APPLICANT(S) FOR DO/EO/US
Kazuhisa YAMAMOTO; Kiminori MIZUUCHI; Yasuo KITAOKA; Makoto KATO

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☒ This is a **FIRST** submission of items concerning a filing under 35 U.S.C. 371.
2. ☐ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a filing under 35 U.S.C. 371.
3. ☒ This is an express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1).
4. ☒ A proper Demand for International Preliminary Examination was made by the 19th month from the earliest claimed priority date.
5. ☒ A copy of the International Application as filed (35 U.S.C. 371 (c) (2))
   a. ☒ is transmitted herewith (required only if not transmitted by the International Bureau).
   b. ☐ has been transmitted by the International Bureau.
   c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
6. ☒ A translation of the International Application into English (35 U.S.C. 371(c)(2)).
7. ☒ A copy of the International Search Report (PCT/ISA/210).
8. ☒ Amendments to the claims of the International Application under PCT Article 19 (35 U.S.C. 371 (c)(3))
   a. ☐ are transmitted herewith (required only if not transmitted by the International Bureau).
   b. ☐ have been transmitted by the International Bureau.
   c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
   d. ☒ have not been made and will not be made.
9. ☐ A translation of the amendments to the claims under PCT Article 19 (35 U.S.C. 371(c)(3)).
10. ☐ An oath or declaration of the inventor(s) (35 U.S.C. 371 (c)(4)).
11. ☐ A copy of the International Preliminary Examination Report (PCT/IPEA/409).
12. ☐ A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371 (c)(5)).

Items 13 to 18 below concern document(s) or information included:

13. ☐ An Information Disclosure Statement under 37 CFR 1.97 and 1.98.
14. ☐ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
15. ☒ A **FIRST** preliminary amendment.
    A **SECOND** or **SUBSEQUENT** preliminary amendment.
16. ☐ A substitute specification.
17. ☐ A change of power of attorney and/or address letter.
18. ☒ Certificate of Mailing by Express Mail
19. ☒ Other items or information:

1. Notice Informing the Applicant of the Communication of the International Application to the Designated Offices
2. UNEXECUTED Declaration/Power of Attorney (3 pages)
3. (30) sheets of drawings
4. English Translation of Pages as Revised Under Article 34 with Argument

Copyright 1997 LegalStar

U.S. APPLICATION NO. (IF KNOWN, SE[illegible] CFR 1.5)	INTERNATIONAL APPLICATION NO.	ATTORNEY'S DOCKET NUMBER
To Be Assigned	**PCT/JP96/01472**	**YAO-3750**

20. The following fees are submitted:.

BASIC NATIONAL FEE (37 CFR 1.492 (a) (1) - (5)) :

		CALCULATIONS PTO USE ONLY
☒ Search Report has been prepared by the EPO or JPO	**$930.00**	
☐ International preliminary examination fee paid to USPTO (37 CFR 1.482)	**$720.00**	
☐ No international preliminary examination fee paid to USPTO (37 CFR 1.482) but international search fee paid to USPTO (37 CFR 1.445(a)(2))	**$790.00**	
☐ Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2) paid to USPTO	**$1,070.00**	
☐ International preliminary examination fee paid to USPTO (37 CFR 1.482) and all claims satisfied provisions of PCT Article 33(2)-(4)	**$98.00**	

ENTER APPROPRIATE BASIC FEE AMOUNT =				**$930.00**	
Surcharge of **$130.00** for furnishing the oath or declaration later than ☐ 20 ☐ 30 months from the earliest claimed priority date (37 CFR 1.492 (e)).				**$0.00**	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE		
Total claims	82 - 20 =	62	x $22.00	**$1,364.00**	
Independent claims	22 - 3 =	19	x $82.00	**$1,558.00**	
Multiple Dependent Claims **(check if applicable).**			☒	**$270.00**	
TOTAL OF ABOVE CALCULATIONS =				**$4,122.00**	
Reduction of 1/2 for filing by small entity, if applicable. Verified Small Entity Statement must also be filed (Note 37 CFR 1.9, 1.27, 1.28) **(check if applicable).**			☐	**$0.00**	
SUBTOTAL =				**$4,122.00**	
Processing fee of **$130.00** for furnishing the English translation later than ☐ 20 ☐ 30 months from the earliest claimed priority date (37 CFR 1.492 (f)).			+	**$0.00**	
TOTAL NATIONAL FEE =				**$4,122.00**	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31) **(check if applicable).**			☐	**$0.00**	
TOTAL FEES ENCLOSED =				**$4,122.00**	
				Amount to be: refunded	**$**
				charged	**$**

☒ A check in the amount of **$4,122.00** to cover the above fees is enclosed.

☐ Please charge my Deposit Account No. in the amount of to cover the above fees.
A duplicate copy of this sheet is enclosed.

☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **18-0350** A duplicate copy of this sheet is enclosed.

NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.

SEND ALL CORRESPONDENCE TO:

Paul F. Prestia
Ratner & Prestia
P. O. Box 980
Valley Forge, PA 19482
(610) 407-0700

Steven E. Koffs
SIGNATURE

Steven E. Koffs
NAME

37,163
REGISTRATION NUMBER

December 2, 1997
DATE

YAO-3750 PATENT

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kazuhisa Yamamoto et al.	: Art Unit:
Serial No.:	To Be Assigned	: Examiner:
Filed:	Herewith	:
FOR: OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE		:

PRELIMINARY AMENDMENT

Assistant Commissioner for Patents
Washington, DC 20231

S I R :

Prior to examination, please amend the above-identified application as follows:

IN THE SPECIFICATION:

After the title and before the first paragraph, please insert --THIS APPLICATION IS A U.S. NATIONAL PHASE APPLICATION OF PCT INTERNATIONAL APPLICATION PCT/JP96/01472--.

Respectfully Submitted,

Steven E. Koffs

Paul F. Prestia, Reg. No. 23,031
Steven E. Koffs, Reg. No. 37,163
Attorneys for Applicants

P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

The Assistant Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

EXPRESS MAIL Mailing Label Number: EI856167136US
Date of Deposit: December 2, 1997

I hereby certify that this paper and fee are being deposited, under 37 C.F.R. § 1.10 and with sufficient postage, using the "Express Mail Post Office to Addressee" service of the United States Postal Service on the date indicated above and that the deposit is addressed to the Assistant Commissioner for Patents, Washington, DC 20231.

Lynn Pentz

AW_I:\YAO\3750\PREAMEND.DOC

Date: December 2, 1997

Hon. Commissioner of Patents and Trademarks:

Please acknowledge receipt of the document(s) described below by imprinting the PTO "date-stamp" hereon and returning this card to the addressee indicated on the reverse side.

DEC 17 1997

FILE NO. YAD-3750 FEE DUE? YES NO AMT. ENC'D $4,122

NAME Kazuhisa Yamamoto et al.

DOCUMENTS Pto Form 1390 (in duplicate); English Translation of International Application; UNSIGNED Declaration/PoA (3 pages); (30) English Drawings; Pre. Amendment (1 page); Copy of International Publication w/International Search Report attached; Notice Informing The Applicant of the Communication of the International Application to the Designated Offices; (1) Check

Article 34 80 Rec'd PCT/PTO 02 DEC 1997

New National Phase Application 08/973380

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

FORM PTO-1390 (Modified) (REV 10-95) U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

TRANSMITTAL LETTER TO THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US) CONCERNING A FILING UNDER 35 U.S.C. 371

ATTORNEY'S DOCKET NUMBER
TAO-3750

U.S. APPLICATION NO. (IF KNOWN, SEE 37 CFR 1.5)
08/973,380

INTERNATIONAL APPLICATION NO.	INTERNATIONAL FILING DATE	PRIORITY DATE CLAIMED
PCT/JP96/01472	**30 May 96 (30.05.96)**	**02JUN95(02.06.95);04JUL95(04.07.95)**

TITLE OF INVENTION
OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE

APPLICANT(S) FOR DO/EO/US
Kazuhisa YAMAMOTO, Kiminori MIZUUCHI, Yasuo KITAOKA and Makoto KATO

Applicant herewith submits to the United States Designated/Elected Office (DO/EO/US) the following items and other information:

1. ☐ This is a **FIRST** submission of items concerning a filing under 35 U.S.C. 371.
2. ☒ This is a **SECOND** or **SUBSEQUENT** submission of items concerning a filing under 35 U.S.C. 371.
3. ☐ This is an express request to begin national examination procedures (35 U.S.C. 371(f)) at any time rather than delay examination until the expiration of the applicable time limit set in 35 U.S.C. 371(b) and PCT Articles 22 and 39(1).
4. ☐ A proper Demand for International Preliminary Examination was made by the 19th month from the earliest claimed priority date.
5. ☐ A copy of the International Application as filed (35 U.S.C. 371 (c) (2))
   a. ☐ is transmitted herewith (required only if not transmitted by the International Bureau).
   b. ☐ has been transmitted by the International Bureau.
   c. ☐ is not required, as the application was filed in the United States Receiving Office (RO/US).
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   c. ☐ have not been made; however, the time limit for making such amendments has NOT expired.
   d. ☐ have not been made and will not be made.
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12. ☐ A translation of the annexes to the International Preliminary Examination Report under PCT Article 36 (35 U.S.C. 371 (c)(5)).

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14. ☒ An assignment document for recording. A separate cover sheet in compliance with 37 CFR 3.28 and 3.31 is included.
15. ☐ A **FIRST** preliminary amendment.
    A **SECOND** or **SUBSEQUENT** preliminary amendment.
16. ☐ A substitute specification.
17. ☐ A change of power of attorney and/or address letter.
18. ☒ Certificate of Mailing by Express Mail
19. ☒ Other items or information:
    Copy of Form PCT/DO/EO/905

OIPE JC59 JUN 21 2004 PATENT & TRADEMARK OFFICE

PCTUS1/REV03
(October 1997)

U.S. APPLICATION NO. (IF KNOWN, SEE 37 CFR 1.5)	INTERNATIONAL APPLICATION NO.	ATTORNEY'S DOCKET NUMBER
08/973,380	PCT/JP96/01472	YAO-3750

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

20. The following fees are submitted:.

BASIC NATIONAL FEE (37 CFR 1.492 (a) (1) - (5)) :

- ☐ Search Report has been prepared by the EPO or JPO **$930.00**
- ☐ International preliminary examination fee paid to USPTO (37 CFR 1.482) **$720.00**
- ☐ No international preliminary examination fee paid to USPTO (37 CFR 1.482) but international search fee paid to USPTO (37 CFR 1.445(a)(2)) **$790.00**
- ☐ Neither international preliminary examination fee (37 CFR 1.482) nor international search fee (37 CFR 1.445(a)(2) paid to USPTO **$1,070.00**
- ☐ International preliminary examination fee paid to USPTO (37 CFR 1.482) and all claims satisfied provisions of PCT Article 33(2)-(4) **$98.00**

				CALCULATIONS	PTO USE ONLY
ENTER APPROPRIATE BASIC FEE AMOUNT =				$0.00	
Surcharge of **$130.00** for furnishing the oath or declaration later than ☐ 20 ☒ 30 months from the earliest claimed priority date (37 CFR 1.492 (e)).				$130.00	
CLAIMS	NUMBER FILED	NUMBER EXTRA	RATE		
Total claims	- 20 =	0	x $22.00	$0.00	
Independent claims	- 3 =	0	x $82.00	$0.00	
Multiple Dependent Claims **(check if applicable).**			☐	$0.00	
TOTAL OF ABOVE CALCULATIONS =				$130.00	
Reduction of 1/2 for filing by small entity, if applicable. Verified Small Entity Statement must also be filed (Note 37 CFR 1.9, 1.27, 1.28) **(check if applicable).**			☐	$0.00	
SUBTOTAL =				$130.00	
Processing fee of **$130.00** for furnishing the English translation later than ☐ 20 ☐ 30 months from the earliest claimed priority date (37 CFR 1.492 (f)). +				$0.00	
TOTAL NATIONAL FEE =				$130.00	
Fee for recording the enclosed assignment (37 CFR 1.21(h)). The assignment must be accompanied by an appropriate cover sheet (37 CFR 3.28, 3.31) **(check if applicable).**			☒	$40.00	
TOTAL FEES ENCLOSED =				$170.00	
				Amount to be: refunded	$
				charged	$

☒ 2 checks in the amount of **$170.00** to cover the above fees is enclosed.

☐ Please charge my Deposit Account No. in the amount of to cover the above fees.
A duplicate copy of this sheet is enclosed.

☒ The Commissioner is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **18-0350** A duplicate copy of this sheet is enclosed.

NOTE: Where an appropriate time limit under 37 CFR 1.494 or 1.495 has not been met, a petition to revive (37 CFR 1.137(a) or (b)) must be filed and granted to restore the application to pending status.

SEND ALL CORRESPONDENCE TO:

Andrew L. Ney
Ratner & Prestia
P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

Andrew L. Ney
SIGNATURE

Andrew L. Ney
NAME

20,300
REGISTRATION NUMBER

March 16, 1998
DATE

RECEIVED

MAR 2 3 1998

PATNER & GRESTIA

Date: March 16, 1998

Hon. Commissioner of Patents and Trademarks:

Please acknowledge receipt of the document(s) described below by imprinting the PTO "date-stamp" hereon and returning this card to the addressee indicated on the reverse side.

FILE NO. YAO-3950 FEE DUE? YES NO AMT. ENC'D $130.00 & $40.00

NAME K. Yamamoto et al

DOCUMENTS PTO-1390(2); Dec/POA; Copy of form PCT/IPO/EO/905; form 1595; assignment; 2 checks & certificate of mailing

08/973,380 O 1 Rec'd PCT/PTO MAR 1 6 1998

OIPE JC59 JUN 2 1 2004 PATENT & TRADEMARK OFFICE

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

AO-3750US1

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Kazuhisa Yamamoto et al.	: Art Unit:
Serial No.:	To Be Assigned	: Examiner:
Filed:	Herewith	
For: OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE		

Divisional of:

Applicant:	Kazuhisa Yamamoto et al.	: Art Unit: 2881
Serial No.:	08/973,380	: Examiner: G. Inzirillo
Filed:	March 16, 1998	: Allowed: June 5, 2001
For: OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE		

INFORMATION DISCLOSURE STATEMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

SIR:

Pursuant to 37 C.F.R. §§ 1.97 and 1.98 and to the duty of disclosure set forth in 37 C.F.R. § 1.56, the Examiner in charge of the above-identified application is requested to consider and make of record the references listed on the PTO 1449 (R&P) submitted herewith. Under 37 C.F.R. § 1.98(d), copies of the patents and publications are not required to be provided, because they were cited by or submitted to the Patent and Trademark Office in prior application, Serial No. 08/973,380, filed March 16, 1998, which is relied upon for an earlier filing date under 35 U.S.C. § 120.

Although the information submitted herewith may be "material" to the Examiner's consideration of the subject application, this submission is not intended to constitute an admission that such information is "prior art" as to the claimed invention.

In accordance with 37 C.F.R. § 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made.

No fee or certification is required. 37 C.F.R. § 1.97(b).

Respectfully submitted,

Andrew L. Ney

Andrew L. Ney, Reg. No. 20,300
Attorney for Applicants

Enclosure: PTO Form 1449 (1 page)

Dated: August 6, 2001
P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

The Assistant Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

EXPRESS MAIL Mailing Label Number: ET548251046US
Date of Deposit: August 6, 2001

I hereby certify that this paper and fee are being deposited, under 37 C.F.R. § 1.10 and with sufficient postage, using the "Express Mail Post Office to Addressee" service of the United States Postal Service on the date indicated above and that the deposit is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Kathleen Libby

Kathleen Libby

OIPE JC69
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

FORM PTO-1449

Sheet 1 of 1

FORM PTO-1449 (Rev. 2-32) U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. YAO-3750US1	SERIAL NO To Be Assigned
Information Disclosure Statement by Applicant (Use several sheets if necessary)	Applicant Kazuhisa Yamamoto et al.	
	FILING DATE Herewith	GROUP

U.S. PATENT DOCUMENTS

Exmr Initial		Document Number	Date	Name	Class	Sub Class	Filing Date
		5,452,312	9/19/95	Yamamoto et al.			
		5,295,218	3/1994	Agostinelli	385	122	
		5,133,524	5/1992	Hirota	359	115	
		4,907,238	3/1990	Chun	372	32	
		4,667,331	5/1987	Alferness	372	12	
		5,614,961	3/1993	Gibeau	348	750	

FOREIGN PATENT DOCUMENTS

Exmr Initial		Document Number	Date	Country	Class	Sub Class	Translation YES	Translation NO
		2-199975	8/8/90	Japan				x
		2-221995	9/4/90	Japan				x
		3-191332	8/21/91	Japan				x
		3-38984	2/20/91	Japan				x
		4-100088	4/2/92	Japan				x
		4-18823	2/17/92	Japan				x
		4-296731	10/21/92	Japan				x
		4-315120	11/6/92	Japan				x
		4-45478	2/14/92	Japan				x
		4-507299	12/17/92	Japan				x
		4-5107421	4/30/93	Japan				x
		5-173094	7/13/93	Japan				x
		5-232536	9/1993	Japan				
		61-22518	5/31/86	Japan				x
		6-148444	5-27-94	Japan				x
		62-274788	11/28/87	Japan				x
		6-265956	9/22/94	Japan				x
		6-273814	9/30/94	Japan				x
		6-350168	12/22/94	Japan				x
		7-15077	1/1995	Japan				
		7-23329	4/25/95	Japan				x

OTHER DOCUMENTS

(Including Author, Title, Date, Pertinent Pages, Etc.)

	1)	K. Mizuuchi et al., "Second-Harmonic Generation of Blue Light in a $LiTaO_3$ Waveguide", Applied Physics Letters, vol. 58, no. 24, pp. 2732-2734 (1991).
	2)	International Search Report corresponding to PCT/JP96/01472 dated 10/8/96.

Examiner	Date Considered

Examiner: Initial if citation considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Date: August 6, 2001

Hon. Commissioner of Patents and Trademarks:

Please acknowledge receipt of the document(s) described below by imprinting the PTO "date-stamp" hereon and returning this card to the addressee indicated on the reverse side.

j1036 U.S. PTO
09/922978
08/06/01

FILE NO. YAO-375DUS1 FEE DUE? YES NO AMT. ENC'D $710

NAME Kazuhisa Yanamoto et al.

DOCUMENTS Certificate of Express Mailing (1 page); Divisional Application Transmittal (3 pages in duplicate); Preliminary Amendment (5 pages w/ Figures 1-6 attached marked with red corrections; Specification [illegible] (89 pages); Copy of DEC/POA (3 pages); English Translation of Pages As Revised under Article 34 (18 pages); Submission of Formal Drawings (1 pg w/ 30 Sheets of Formal Drawings attached); Information Disclosure Statement (2 pages); PTO-1449 (1 page); (1) check

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DIV OF 08/973,380

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JUN 2 1 2004
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YAO-3750US1

PATENT

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No:	09/922,978
Applicant:	K. Yamamoto et al.
Filed:	August 6, 2001
Title:	OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE
TC/A.U.:	2881
Examiner:	

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
Washington, DC 20231

Sir:

Pursuant to 37 C.F.R. §§ 1.97 and 1.98 and to the duty of disclosure set forth in 37 C.F.R. § 1.56, the Examiner in charge of the above-identified application is requested to consider and make of record the references listed on the PTO 1449 (R&P) submitted herewith. A copy of each of the listed references is also enclosed.

Although the information submitted herewith may be "material" to the Examiner's consideration of the subject application, this submission is not intended to constitute an admission that such information is "prior art" as to the claimed invention.

In accordance with 37 C.F.R. § 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made.

Reference 08-194196 is not in the English language, but an English abstract thereof is attached to the copy of the reference submitted herewith.

This Information Disclosure Statement is being filed before mailing of the first Official Action. No first Official Action has yet been received and it is presumed that none has yet been mailed. No fee or statement is required. 37 C.F.R. § 1.97(b).

Respectfully submitted,

Andrew L. Ney, Reg. No. 20,300
Attorney for Applicants

ALN/ap

Enclosures: PTO Form 1449
(2) References
Transmittal Form

Dated: April 25, 2003

P.O. Box 980
Valley Forge, PA 19482-0980
(610) 407-0700

The Assistant Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on:

4/25/03

OIPE JC56
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

FORM PTO-1449

FORM PTO-1449 (Rev. 2-32)	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. YAO-3750US1	SERIAL NO 09/922,978
Information Disclosure Statement by Applicant (Use several sheets if necessary)		APPLICANT K. Yamamoto et al.	
		FILING DATE August 6, 2001	GROUP 2881

U.S. PATENT DOCUMENTS

Exmr Initial		Document Number	Date	Name	Class	Sub Class	Filing Date

FOREIGN PATENT DOCUMENTS

Exmr Initial		Document Number	Date	Country	Class	Sub Class	Translation YES	NO
		08-194196	07/30/96	Japan (w/English Abstract)				

OTHER DOCUMENTS
(Including Author, Title, Date, Pertinent Pages, Etc.)

		1)	"Postfabrication Changes and Dependence on Hydrogen Concentration of the Refractive Index of Proton-Exchanged Lithium Tantalate Waveguides", H. Ahlfeldt, et al. January 15, 1994, pages 717-727.

Examiner	Date Considered

Examiner: Initial if citation considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

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MAY 0 5 2003

April 25, 2003

_____ 20____

Hon. Commissioner of Patents & Trademarks

Please acknowledge receipt of the document(s) described below by imprinting the Patent & Trademark Office "date-stamp" hereon and returning this card to the addressee indicated on the reverse side.

FILE NO. YAO-37505 NAME K. YAMAMOTO et al.

Fee Due? YES NO Amt. Encl. 0

Documents: Transmittal

SUPP. IDS, 1449 w/2 refs.

OIPE

APR 3 0 2003

09/922,978

OIPE

JUN 2 1 2004

PATENT & TRADEMARK OFFICE

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YAO-3750US1

PATENT

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No:	09/922,978
Applicant:	Kazuhisa Yamamoto, et al.
Filed:	August 6, 2001
Title:	OPTICAL DEVICE, LASER BEAM SOURCE, LASER APPARATUS AND METHOD OF PRODUCING OPTICAL DEVICE
TC/A.U.:	2881
Examiner:	Leon Scott, Jr.
Conf. No.:	1750

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

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

Sir:

Pursuant to 37 C.F.R. §§ 1.97 and 1.98 and to the duty of disclosure set forth in 37 C.F.R. § 1.56, the Examiner in charge of the above-identified application is requested to consider and make of record the references listed on the PTO 1449 (R&P) submitted herewith. A copy of each of the listed references is also enclosed.

Although the information submitted herewith may be "material" to the Examiner's consideration of the subject application, this submission is not intended to constitute an admission that such information is "prior art" as to the claimed invention.

In accordance with 37 C.F.R. § 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made.

Reference JP 6-18823 is not in the English language, but an English translation thereof is attached to the copy of the reference submitted herewith.

This Information Disclosure Statement is being filed within three months of the filing date of the above-referenced application or before mailing of the first Official Action. No first Official Action has yet been received and it is presumed that none has yet been mailed. No fee or statement is required. 37 C.F.R. § 1.97(b).

Respectfully submitted,

Daniel N. Calder

Daniel N. Calder (Reg. No. 27,424)
Attorney for Applicants

DNC/vj

Enclosures: PTO Form 1449
(4) References
Chinese Office Action dated July 10, 2003
Transmittal Form

Dated: August 27, 2003

☒ P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

☐ P.O. Box 1596
Wilmington, DE 19899
(302) 778-2500

The Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. **18-0350** of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

August 27, 2003

Archie Jones

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

(AW 08/03)

Substitute for Form 1449A/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

SHEET 1 of 2

Complete if Known	
Application Number	09/922,978
Filing Date	August 6, 2001
First Named Inventor	Kazuhisa Yamamoto, et al.
Art Unit	2828
Examiner Name	Leon Scott, Jr.
Attorney Docket No.	YAO-3750US1

U.S. PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Document Number Number - Kind Code[2] (if known)	Publication Date (MM-DD-YYYY)	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear
		US-4,665,529	05-12-1987	Baer, et al.	
		US-5,036,220	07-30-1991	Byer, et al.	
		US-5,303,247	04-12-1994	Yamamoto, et al.	
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FOREIGN PATENT DOCUMENTS

Examiner Initials*	Cite No.[1]	Foreign Patent Document Country Code[3] - Number[4] - Kind Code[5] (If known)	Publication Date (MM-DD-YYYY)	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages or Relevant Figures Appear	T[6]
		JP 6-18823 U	03-11-1994			☒
						☐
						☐
						☐
						☐
						☐

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

[1]Applicant's unique citation designation number (optional).
[2]See Kind Codes of USPTO Patent Documents at www.uspto.gov or MPEP 901.04.
[3]Enter Office that issued the document, by the two-letter code (WIPO Standard St.3).
[4]For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document.
[5]Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible.
[6]Applicant is to place a check mark here if English language translation is attached.

The collection of information is required by 37 CFR 1.97 and 1.98. 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 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

OIPE JC59
JUN 2 1 2004
PATENT & TRADEMARK OFFICE

(AW 08/03)

Substitute for Form 1449B/PTO

INFORMATION DISCLOSURE STATEMENT BY APPLICANT

(Use as many sheets as necessary)

SHEET 2 of 2

Complete if Known	
Application Number	09/922,978
Filing Date	August 6, 2001
First Named Inventor	Kazuhisa Yamamoto, et al.
Art Unit	2828
Examiner Name	Leon Scott, Jr.
Attorney Docket No.	YAO-3750US1

NON-PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published	T[2]
		Chinese Office Action dated July 10, 2003.	☐
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Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to Applicant.

[1]Applicant's unique citation designation number (optional).

[2]Applicant is to place a check mark here if English language translation is attached.

The collection of information is required by 37 CFR 1.98. 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 120 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS.
SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

OIPE JC59
JUN 21 2004
PATENT & TRADEMARK OFFICE

Date: 8/27/03

Assistant Commissioner for Patents:

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FILE NO.: YAO-3750US1 FEE DUE? YES or NO AMT. ENC'D. $ -0-

NAME: Kazuhisa Yamamoto, et al.

- ☐ Specification (_____ pp.)
- ☒ IDS & PTO 1449 (98 pp.)
- ☐ Copy of Search Report
- ☐ Claim to Right of Priority
- ☐ Response to Missing Parts
- ☐ Declaration & POA (_____ pp)
- ☐ Petition for Ext. of Time (____ mo.)
- ☐ Utility Transmittal
- ☐ Amendment (_____ pp.)
- ☐ Issue Fee/Publication Fee
- ☐ Response to OA (_____ pp.)
- ☐ _____

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SEP 15 2003
Rainer Prestia

- ☐ Drawing(s) (_____ pp.)
- ☐ Copy of _____ Reference(s)
- ☐ Form 1390
- ☐ Priority Document(s) _____
- ☒ Transmittal Form
- ☐ Certificate of Express Mailing
- ☐ Assignment & Form 1595 (_____ pp.)
- ☐ Fee Transmittal
- ☐ Preliminary Amendment (_____ pp.)
- ☐ Formal Drawing(s) (_____ pp.)
- ☒ Chinese Office Action

Serial No.: 09/922,978

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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

Paper No. 6

MAIL

APR - 5 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of:)
Stephen J. Keating, et al.)
Application No.: 09/922,990)
Filed: August 3, 2001)
For: DIGITAL DISPLAY JITTER CORRECTION APPARATUS AND METHOD

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request To Withdraw As Attorneys filed February 26, 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**.

The following attorneys are withdrawn from the record: Greg T. Sueoka; Jeffrey S. Smith; and Michael W. Farn.

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.

Kenneth A. Wieder

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Paul Hickman
Oppenheimer Wolff & Donnelly, LLP
1400 Page Mill Road
Palo Alto, CA 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

PAULA D. MORRIS & ASSOCIATES PC
D/B/A/ THE MORRIS LAW FIRM PC
10260 WESTHEIMER, SUITE 360
HOUSTON, TX 77042-3110

COPY MAILED

APR 0 5 2005

OFFICE OF PETITIONS

In re Application of	:
Marilyn Wood Blaschke	:
Application No. 09/923,042	: DECISION GRANTING PETITION
Filed: August 6, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 194-26572-US	:

This is a decision on the petition, filed April 4, 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 10, 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 1764 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks

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

Paper No. 6

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JAN 0 4 2002

OFFICE OF PETITIONS

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527--2400

In re Application of :
Richardson :
Application No. 09/923,045 : DECISION GRANTING
Filed: August 6, 2001 : PETITION
Attorney Docket No. 10990318-2 :

This is a decision on the petition filed October 12, 2001, to establish that Figure 13 was part of the originally filed application.

On August 6, 2001, the application was filed.

On August 27, 2001, the Office of Initial Patent Examination mailed a "Notice to File Corrected Application Papers" stating that the application had been accorded a filing date of August 6, 2001, and advising applicants that Figure 13 described in the specification appeared to have been omitted.

In response, the present petition was filed alleging that Figure 13 was deposited on August 6, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Drawings 10 Sheet(s) (FIGS. 1A-13)" on August 6, 2001.[1] Petitioner has also submitted a copy of the missing documentation- Figure 13.

Upon review of the record, Figure 13, deposited on August 6, 2001, has not been located. However, the evidence is convincing that the application papers deposited on August 6, 2001, included Figure 13, and that Figure 13 was subsequently misplaced in the PTO.

In view of the above, the petition is **granted**. The copy of Figure 13 submitted with the petition will be entered.

The petition fee will be credited to deposit account no. 08-2025.

On future transmittal sheets for continuation applications, as an additional safeguard, applicant may wish to include the language,

---

[1] Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

"The entire disclosure of the prior application, from which an oath or declaration is supplied, is considered part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference." The incorporation by reference provision is intended to only be relied upon when a portion of an application has been inadvertently omitted from an application, and not as a substitute for filing required portions of an application.[2]

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 6, 2001, using the application papers filed on August 6, 2001 and the copy of Figure 13 filed on August 6, 2001. The Office of Initial Patent Examination will also consider the substitute drawings filed with the petition to determine if they comply with 37 CFR 1.84.

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

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

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[2] MPEP 201.06(c) states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant <u>to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition</u>. (emphasis supplied)

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WONG CABELLO LUTSCH
RUTHERFORD & BRUCCULERI, PC
20333 SH 249, SUITE 600
HOUSTON, TX 77070

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NOV 24 2004

OFFICE OF PETITIONS

In re Application of
David S. Becker et al
Application No. 09/923,058
Filed: August 6, 2001
Attorney Docket No. 102-0072US-4

:DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed October 13, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed nonprovisional Application No. 09/344,277, filed June 30, 1999, as set forth in the concurrently filed amendment.

The petition is **DISMISSED AS MOOT**.

A petition under 37 CFR § 1. 78(a)(3) is only applicable to those applications filed on or after November 29, 2000.

Along with the instant petition under 37 CFR § 1.78(a)(3), petitioner has submitted an amendment to the first sentence of the specification following the title to include a reference to the above-noted, prior-filed application.

The instant pending nonprovisional application was filed on August 6, 2001, and was pending at the time of filing of the instant petition. While a reference to the above-noted, prior-filed application was not included in an ADS or in the first sentence of the specification following the title, reference nevertheless was made in the transmittal letter entitled "Request for Filing Continuation Application under 37 C.F.R. § 1.53(b)," filed with the above-identified application.

The current procedure where a claim for priority under 37 CFR § 1.78(a)(3) 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)(2)(ii).

However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth 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)(3).[1] In the instant case, the Office noted the claim for priority of the above-noted, prior-filed application in the transmittal letter filed with the application, as shown by its inclusion on the filing receipt.

In view of the above, the $1,370 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 the undersigned at (571) 272-3218. 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 the Examiner of Technology Center AU 1763 for consideration of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) for benefit of the above-noted, prior-filed nonprovisional application.

Frances Hicks

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

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[1] *Note* MPEP 201.11 (V), page 200-75 (Rev. 1. Feb. 2004 and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

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MORRIS, MANNING & MARTIN LLP
1600 ATLANTA FINANCIAL CENTER
3343 PEACHTREE ROAD NE
ATLANTA GA 30326

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MAR 20 2007

OFFICE OF PETITIONS

In re Application of	:	
WHEELER et al	:	
Application No.: 09/923,075	:	DECISION ON PETITION
Filing Date: August 6, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: 10399-34383	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 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 Non-Compliant Amendment mailed December 2, 2005, 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, by operation of law, the above-identified application became abandoned on January 3, 2006 (January 2, 2006 being a Federal holiday).

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 in compliance with 37 CFR 1.121; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Non-Compliant Amendment mailed December 2, 2005 is accepted as having been unintentionally delayed.

This application is being referred to Technology Center AU 2137 for appropriate action, if any, on the reply in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3301.

Daniel Stemmer
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent Department
Mitsubishi Electric Research Laboratories, Inc.
201 Broadway
Cambridge MA 02139

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JUL 03 2006

OFFICE OF PETITIONS

In re Application of	:	
Yerazunis et al.	:	
Application No. 09/923,107	:	DECISION ON PETITION
Filed: August 6, 2001	:	
Title: Privacy-Enhanced Display Device	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 23, 2006, to revive the above-identified application.

This petition is hereby **Dismissed**.

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

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on September 30, 2005. The 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 December 31, 2005. A Notice of Abandonment was mailed on April 21, 2006.

37 CFR 1.33(b) states in pertinent part:

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 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.

Although the certificate of mailing was executed by a registered agent, the signature block of the petition was left unsigned.

The petition has **not** been reviewed on its merits.

There is no indication that Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision will be mailed to Petitioner.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Patent Department
Mitsubishi Electric Research Laboratories, Inc.
201 Broadway
Cambridge MA 02139

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AUG 0 2 2006

OFFICE OF PETITIONS

In re Application of :
Yerazunis et al. :
Application No. 09/923,107 : DECISION ON PETITION
Filed: August 6, 2001 :
Title: Privacy-Enhanced Display Device :

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

This petition is hereby **Dismissed**.

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

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on September 30, 2005. The 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 December 31, 2005. A Notice of Abandonment was mailed on April 21, 2006. A petition under 37 CFR 1.137(b) was dismissed on July 3, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was 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 Director may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1).

As to item (1), petitioner submitted an amendment with the instant petition. However, the examiner has determined the amendment does not place the application in condition for allowance. The proposed reply required for consideration of a petition to revive must be an Appeal brief and fee, an amendment that prima facie places the application in condition for allowance, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114. Accordingly, this application cannot be revived.

A copy of an advisory action has been included for petitioner's convenience.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Patent Department
Mitsubishi Electric Research Laboratories, Inc.
201 Broadway
Cambridge MA 02139

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AUG 24 2006
OFFICE OF PETITIONS

In re Application of :
Yerazunis et al. :
Application No. 09/923,107 : DECISION ON PETITION
Filed: August 6, 2001 :
Title: Privacy-Enhanced Display Device :

This is a decision on the petition under 37 CFR 1.137(b), filed August 9, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a response to a final Office Action which was mailed on September 30, 2005. The 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 December 31, 2005. A Notice of Abandonment was mailed on April 21, 2006. Petitions under 37 CFR 1.137(b) were dismissed on July 3, 2006 and August 2, 2006.

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

Pursuant to petitioner's request deposit account 50-0749 will be charged the $790.00 RCE fee.

This application is being forwarded to Technology Center 2600 for further processing.

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

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

May 20, 2003

James B. Myers
Woodard, Emhardt, Naughton,
Moriarty & McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis, IN 46204-5137

In re application of:
William F. McKay DECISION ON PETITION
Serial No.: 09/923,117
Filed: August 6, 2001
For: OSTEOGENIC PASTE COMPOSITIONS
AND USES THEREOF

This is a decision on the faxed petition received on December 2, 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 September 13, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned November 14, 2001. The Notice of Abandonment was mailed on November 18, 2002.

On December 2, 2002, the office received a communication from attorney of record. Enclosed was an acknowledgment that the attorney never received the Notice to File Missing Parts mailed September 13, 2001.

The evidence submitted is sufficient to establish that the petitioners never received the Notice to File Missing Parts mailed September 13, 200l.

The petition is hereby GRANTED.

A New Notice to File Missing Parts is enclosed with this Decision setting forth a new response period of two months from the date of the notice.

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

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JUN 2 6 2002

Technology Center 2100

Paper No. 6

Alex L. Yip
Kaye Scholer LLP
425 park Avenue
New York NY 10027

In re Application of: M. L. Obradovich.	)	
Application No. 09/923,125	)	**DECISION ON PETITION**
Filed: August 6, 2001	)	**UNDER M.P.E.P. §708.02(II):**
For: CENTRALIZED CONTROL AND	)	**INFRINGEMENT**
MANAGEMENT SYSTEM FOR	)	
AUTOMOBILES	)	

This is a decision on the petition, filed February 26, 2002, 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(d), and M.P.E.P. §708.02, Section II, must be accompanied by payment of the fee under 37 C.F.R.§1.117(h) 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.

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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535 SMITHFIELD STREET
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DEC 17 2009

OFFICE OF PETITIONS

In re Patent No. 6,939,632	:	
Issue Date: September 6, 2005	:	
Application No. 09/923,139	:	LETTER
Filed: August 6, 2001	:	
Attorney Docket No. 010400	:	

This is in response to the notice filed by facsimile on July 24, 2009, for acceptance of a fee deficiency submission under 37 CFR 1.28.

Your fee deficiency submission under 37 CFR 1.28 is hereby **NOT ACCEPTED**.

It appears that the petition was not properly signed by a person having authority to prosecute in the above-identified patent. Therefore, the request can not be accepted at this time.

Petitioner's attention is directed to 37 CFR 1.33(b), which states.

> (b) Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:
>
> (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
> (2) A registered patent attorney or patent agent not of record who acts in a representative capacity under the provisions of § 1.34;
> (3) An assignee as provided for under §3.71(b) of this chapter; or
> (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

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.

Accordingly, the request cannot be accepted until it is signed by all inventors, an attorney/agent who is registered to practice before the U.S. Patent and Trademark Office, or the assignee of the entire interest. If the request is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b).

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

cc: Daniel O' Brien
Massachusetts Institute of Technology
Technology Licensing Office
Five Cambridge Center, Kendall Square
Cambridge, Massachusetts 02142-1493

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P.O. Box 1450
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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APR 3 0 2008

OFFICE OF PETITIONS

In re Application of	:	
Nicholas FRATTALONE	:	
Application No. 09/923,161	:	DECISION ON PETITION
Filed: August 06, 2001	:	
Attorney Docket No. **P24256-B USA**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 28, 2008, 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 July 13, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 14, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405, and the submission required by 37 CFR 1.114; (2) the petition fee of $770; and (3) a proper statement of unintentional delay.

The address as cited on the petition differs from the address of record. Although a courtesy copy of this decision is being mailed to the address as cited on the petition, all future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

Copied from 09231161 on 07/09/2008

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-2783.

This application is being referred to Technology Center AU 3693 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

David Bucci
Petitions Examiner
Office of Petitions

cc: **PETER J. BUTCH, III.**
997 LENOX DR. BLDG. 3
LAWRENCEVILLE, NJ 08648

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OFFICE OF PETITIONS

In re Application of :
Nicholas Frattalone :
Application No. 09/923,161 : DECISION ON PETITION
Filed: August 6, 2001 :
Attorney Docket No. **32958.00007** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 18, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 17, 2009, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 18, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment, (2) the petition fee of $810, and (3) a proper statement of unintentional delay.

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

This application is being referred to Technology Center AU 3693 for appropriate action by the Examiner in the normal course of business.

JoAnne Burke
Petitions Examiner
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : May 7 2007

TO SPE OF : ART UNIT 2661

SUBJECT : Request for Certificate of Correction for Appl. No. 09/923171 patent no. 6393002

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.

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

Comments: _____

SPE

2613

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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Paper No. 11

Michael B. Atlass
Unisys Corporation
Unisys Way, MS/E8-114
Blue Bell, PA 19424-0001

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JUN 2 6 2002

OFFICE OF PETITIONS

In re Application of
Bruce Alan Vessey, et al.
Application No. 09/923,175
Filed: August 6, 2001
Attorney Docket No. TN134

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed May 13, 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 March 4, 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 5, 2002.

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

The "Change of Address" has been accepted and recorded.

Telephone inquiries concerning this decision should be directed to Retta Williams at (703) 306-5594 or in my absence, Latrice Bond at (703) 308-6911.

The application file is being forwarded to 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

Latrice Bond

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

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MICHAEL B. ATLASS, ESQ.
UNISYS CORPORATION
UNISYS WAY, MS/E8-114
BLUE BELL, PA 19424-0001

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DEC 0 5 2005

OFFICE OF PETITIONS

In re Application of
Bruce Alan Vessey et al.
Application No. 09/923,175
Filed: August 6, 2001
Attorney Docket No.: TN134

ON PETITION

This is a decision on the petition filed November 16, 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 June 4, 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 September 8, 2004. Accordingly, a Notice of Abandonment was mailed May 17, 2005.

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

This matter is being referred to Technology Center 2194 for appropriate action on the amendment filed November 16, 2005.

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

---

[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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ALEXANDRIA, VA 22313-1450
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Paper No. 17

METZ LEWIS, LLC
11 STANWIX STREET
18TH FLOOR
PITTSBURGH PA 15222

COPY MAILED

FEB 12 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Teller, et al. :
Application No. 09/923,181 :
Filed: August 6, 2001 :
Attorney Docket No. 1148/039 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 14, 2003, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Office action mailed April 23, 2003. Accordingly, this application became abandoned on July 24, 2003. A Notice of Abandonment was mailed on November 10, 2003.

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 $475.00 extension of time submitted with the petition on November 14, 2003 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account no. 50-0525.

The file is being forwarded to Technology Center 3700 for review of the amendment filed November 14, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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ANTHONY DONARUMIA
474 KIME AVENUE
WEST ISLIP NY 11795

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JAN 18 2005

OFFICE OF PETITIONS

In re Application of
Anthony Donarumia
Application No. 09/923,219
Filed: August 7, 2001
Title of Invention: APPARATUS FOR USE WITH PIZZA DOUGH

ON PETITION

RECEIVED

FEB 28 2005

TC 1700

This is a decision on the petition under 37 CFR 1.137(b), filed September 17, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on December 26, 2003 for failure to timely file a reply to the final Office action mailed September 25, 2003, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed May 18, 2004.

The Notice of Appeal filed September 17, 2004 has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

The application is being forwarded to Technology Center 1772 for processing of the Notice of Appeal.

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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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GOODWIN PROCTER LLP
PATENT ADMINISTRATOR
53 STATE STREET
EXCHANGE PLACE
BOSTON, MA 02109-2881

Mail Date: 04/20/2010

Applicant	: Stephen J. Plante	: DECISION ON REQUEST FOR
Patent Number	: 7661059	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/923,225	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/06/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **905** 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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DR. ABDUL RASOUL SALMON
3228 EAST 15TH STREET
PANAMA CITY FL 32405-7423

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DEC 18 2009

OFFICE OF PETITIONS

In re Patent No. 6,629,760	:	
Issue Date: August 16, 2005	:	
Application No. 09/923,227	:	DECISION ON PETITION
Filed: August 06, 2001	:	
Attorney Docket No. 417/9-1553B	:	

This is a decision on the petition under 37 CFR 1.378(c), filed October 21, 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 16, 2009, for failure to pay the three and one-half 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.

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 undersigned at (571)-272-4231.

The patent file is being forwarded to Files Repository.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **ABDUL RASOUL SALMON**
268 SUKOSHI DRIVE
PANAMA CITY FL 32404

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

COHEN PONTANI LIEBERMAN & PAVANE
SUITE 1201
551 FIFTH AVENUE
NEW YORK NY 10176

COPY MAILED

JUL 19 2002

OFFICE OF PETITIONS

In re Application of	:
Petteri HEINONEN et al	:
Application No. 09/923,255	: DECISION REFUSING STATUS
Filed: August 2, 2001	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 2132-50PCON	:

This is in response to the petition under 37 CFR 1.47(a), filed April 15, 2002.

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 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 nonsigning 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 (1) set forth above.

As to item (1), rule 47 applicant must demonstrate with documented evidence that an inventor 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 joint inventor Sami Oinonen was presented with a copy of the complete application papers for the instant nonprovisional application. From the evidence of record, it only appears that joint inventor Oinonen was presented with a copy of declaration and assignment. If joint inventor Oinonen was not presented with a copy of the application papers for the instant nonprovisional application, then Mr. Oinonen could not attest that he has "reviewed and understands the application papers" and could not execute the declaration he was requested to sign. Did inventor Oinonen receive a copy of the application papers? Unless petitioner can show that a copy of the application papers was presented to, or refused delivery by, inventor Oinonen, then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the last known address of joint inventor Oinonen. 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.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in 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 the undersigned.

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

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 8

COHEN PONTANI LIEBERMAN & PAVANE
SUITE 1201
551 FIFTH AVENUE
NEW YORK, NY 10176

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OCT 2 8 2002

OFFICE OF PETITIONS

In re Application of	:
Petteri HEINONEN et al	:DECISION NOTING JOINDER OF
Application No. 09/923,255	:INVENTOR AND PETITION UNDER
Filed: August 2, 2001	:37 1.47(a) MOOT
For: 2132-50PCON	:

Papers filed on October 16, 2002 in response to a "Decision Refusing Status Under 37 CFR 1.47(a)," mailed July 19, 2002, included a Declaration signed by previously nonsigning inventor Sami Oinonen 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 the Office of Initial Patent Examination to complete processing of the application.

Inquiries related to this decision may be addressed to the undersigned at (703) 305-8680.

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

#9

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FROM DIRECTORS OFFICE
JAN 24 2005
TECHNOLOGY CENTER 3600

Vidas, Arrett & Steinkraus, P.A.
6109 Blue Circle Drive
Suite 2000
Minnetonka, MN 55343-9185

In re Application of
E. Wendell Diller
Application No. 09/923,272
Filed: August 3, 2001
For: ELONGATED VENTED GUN BARREL

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is a decision on the petition to withdrawal the holding of abandonment filed on October 28, 2004 in the United States Patent and Trademark Office.

The petition is **GRANTED** in view of the following evidence of timely filing :

☐ Postcard receipt being dated_____.

☒ USPTO return facsimile receipt dated January 29, 2003 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/rwg: 1/10/05

STEVEN N. MEYERS
SPECIAL PROGRAM EXAMINER
TECHNOLOGY CENTER 3600

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MAY 11 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Alix, Yale & Ristas, LLP
750 Main Street,
SUITE 1400
Hartford, CT 06103-2721

In re application of
Hubert T. McGovern et al.
Application No. 09/923,288
Filed: August 6, 2001
For: DECK SCREWS SUITABLE FOR USE WITH COMPOSITE LUMBER

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed April 12, 2004 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) 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 (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed April 12, 2004 meets all of the requirements above and, therefore, the petition is **GRANTED**.

With regards to element 2(C) above, an Information Disclosure Statement was filed concurrently with the petition.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/vdb: 5/04/04

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

STEVEN A. SWERNOFSKY
SWERNOFSKY LAW GROUP
P.O. BOX 390013
MOUNTAIN VIEW, CA 94039-0013

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FEB 8 2002

OFFICE OF PETITIONS

In re Application of
Stephane Kasriel et al.
Application No. 09/923,292
Filed: August 6, 2001
Attorney Docket No. 155.1007.01

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 2100.

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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WASHINGTON, D.C. 20231
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Paper No. 3

Sherman & Shalloway
P.O. Box 788
Alexandria, VA 22313

JAN 4 2001

In re Application of:
Leitner-Wise *et al.*
Application No. 09/923,319
Filed: August 8, 2001
Attorney Docket No. LWC-100

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed October 30, 2001.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of 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 Leonard W. Sherman on behalf of all attorneys of record and there is no outstanding Office action requiring a response by the applicant.

The request is APPROVED.

There is no attorney of record at this time.

As indicated in the request, all future communications from the Office will be directed to Leitner-Wise Rifle Co., Inc. 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: Leitner-Wise Rifle Co., Inc.
1033 North Fairfax Street
Alexandria, Virginia 22314
Attn: Paul Leitner-Wise

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NIXON & VANDERHYE PC
1100 GLEBE ROAD, 8TH FLOOR
ARLINGTON, VA 22201-4714

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JUL 2 6 2004

OFFICE OF PETITIONS

In re Application of	:
Gillian F. Marshall et al	:
Application No. 09/923,341	: DECISION GRANTING PETITION
Filed: August 8, 2001	: UNDER 37 CFR 313(c)(2)
Attorney Docket No. 124-880	:

This is a decision on the petition, filed July 26, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on 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 should be directed to the undersigned at (703) 305-8680.

This matter is being referred to Technology Center AU 2815 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

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

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JUL 19 2004

OFFICE OF PETITIONS

In re Application of	:	
Masumi Kubo et al	:	
Application No. 09/923,344	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. 3693-22	:	

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 May 4, 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) 305-8859.

The examiner of Technology Center AU 2814 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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NIXON & VANDERHYE P.C.
8TH FLOOR
1100 NORTH GLEBE RD.
ARLINGTON VA 22201-4714

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MAR 16 2005

OFFICE OF PETITIONS

In re Application of	:	
Masumi Kubo et al	:	
Application No. 09/923,344	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. 3693-22	:	

This is a decision on the petition, filed March 10, 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 November 18, 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) 272-3208.

The examiner of Technology Center AU 2814 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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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Thomas E. Malyszko
Patent and Trade Mark Agent
Suite 1500
250 - 6 Ave. S.W.
Calgary AB T2P 3H7 CA CANADA

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FEB 2 0 2007

OFFICE OF PETITIONS

In re Application of
Liqing Liu
Application No. 09/923,368
Filed: August 8, 2001
Attorney Docket Number: 234.2

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 22, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of September 30, 2002. 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 December 31, 2002. A Notice of Abandonment was mailed on June 30, 2003.

This Petition is hereby **Granted**.

Petitioner submitted a request for a three (3) month extension of time with the instant petition. However, pursuant to 37 CFR 1.136, an extension of time 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) Petitioner's six (6) month maximum extendable period expired on June 15, 2006. Petitioner is ineligible for any extensions of time. Petitioner is entitled to a refund of the previously submitted extension of time fee of $510. Petitioner may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

There is no indication that the person signing the present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified

application. If the person signing the present petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent and change of correspondence address must be submitted. While a courtesy copy of this decision is being mailed to the person signing the present petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary

The office hereby acknowledges the receipt of the Amendment submitted with the instant petition.

This application is being forwarded to Technology Center 3600 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: David Carstens
P.O. Box 802334
Dallas, TX 75380

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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Vedder Price P.C.
222 N. LaSalle St.
Chicago, IL 60601

MAILED

JUL 23 2010

OFFICE OF PETITIONS

In re Shaun S. Wang :
Application No.: 09/923,377 : **DECISION**
Filed: August 6, 2001 : **GRANTING**
Patent No.: 7,315,842 : **PETITION**
Issued: January 1, 2008 :

This is a decision on the January 17, 2008 petition requesting issuance of a corrected patent pursuant to 35 U.S.C. 254 and 37 CFR 1.322(b) ("the January 17, 2008 petition").

The January 17, 2008 petition is before the Office of Patent Legal Administration (OPLA) for consideration.

The January 17, 2008 petition is **granted**.

The Image for U.S. Patent No. 7,315,842 in the USPTO Patent Full-Text and Image Database maintained by the Office will be updated to include the corrected patent in the form of a Certificate of Correction, in addition to the original, incorrectly printed patent. The Office will also provide a courtesy corrected reprint of U.S. Patent No. 7,315,842 for patent owner's records

Any inquiry concerning this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.

Brian E. Hanlon

Brian E. Hanlon
Director
Office of Patent Legal Administration
Office of the Associate 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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AUG 12 2002

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Arnold & Porter
IP Docketing Department
Room 1126(b)
555 12th Street, N.W.
Washington, DC 20004-1206

Paper No. 9

In re application of
Leslie Dennis Michelson et al.
Application No. 09/923,385
Filed: August 8, 2001
For: SYSTEMS AND METHODS FOR SELECTING AND RECRUITING INVESTIGATORS AND SUBJECTS FOR CLINICAL STUDIES

DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)

This is a decision on the petition under 37 C.F.R § 1.102(d) filed August 8, 2001 to make the above-identified application special. The delay in treating this petition is sincerely regretted.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market; (B) that a rigid comparison of the alleged infringing device or product 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) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed August 8, 2001 includes all of the requirements above and, therefore, 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 and 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.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

snm/snm : 8/10/02

#8

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Supervisor, Patent Prosecution Services
PIPER MARBURY RUDNICK & WOLFE LLP
1200 Nineteenth Street, N.W.
Washington DC 20036-2412

MAIL

JAN 2 5 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In Re Application:
WEAVER, CHRISTOPHER S.
Appl No. 09/923,410
Filed: August 8, 2001
Title: **METHOD AND SYSTEM FOR A COMPUTER-RENDERED THREE-DIMENSIONAL MANNEQUIN**

WITHDRAW FROM ISSUE
FEE PAID

The above-identified application is withdrawn from issue after payment of the issue fee due to a mistake on the part of the Office. See 37 CFR 1.313(b)(1).

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 Mark Zimmerman, 703-305-9798.

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

Reinhard Eisenzopf
For Joseph J. Rolla, Jr.
Director TC 2600
Communications

#9

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DATE: January 5, 2005

TO: Director, Office of Publication
PK3- 910

FROM: Mark Zimmerman
SPE, Art Unit 2671

MAIL

JAN 2 5 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SUBJECT: WITHDRAWAL FROM ISSUE

Applicant: WEAVER, CHRISTOPHER S.
Serial No.: 09/923,410
Filed: August 8, 2001
For: **METHOD AND SYSTEM FOR A COMPUTER-RENDERED THREE-DIMENSIONAL MANNEQUIN**
Notice of Allowance Mailed: July 29, 2003
Issue Fee Paid Date: October 30, 2003

It is requested that the above-identified application be withdrawn from issue for the following purpose:

Reopen Prosecution

The issue fee has been paid. It is directed that this application be withdrawn from issue under 37 CFR 1.313 and returned to the jurisdiction of examining Workgroup 2670.

The Examiner is authorized and directed to take prompt appropriate action on this case including notifying applicants of the new status of this application. Return this application promptly to the Office of the Director Workgroup 2670.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DIW 05-04

Paper No. 18

VARNDELL & VARNDELL, PLLC
106-A S. COLUMBUS ST.
ALEXANDRIA VA 22314

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MAY 0 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Seki et al.	:	
Application No. 09/923,413	:	DECISION GRANTING PETITION
Filed: 8 August, 2001	:	
Attorney Docket No. VX012332	:	

This is a decision on the petition filed under 37 CFR 1.182 on 2 March, 2004, which is treated as a petition requesting that the USPTO disregard the declaration filed on 27 September, 2001, and consider the preliminary amendment filed on 8 August, 2001, as a part of the original disclosure.

The petition is GRANTED.

The application, as filed, is considered as not including a declaration. The application will comprise the application papers filed on 8 August, 2001, including the preliminary amendment, and the declaration filed on 28 July, 2003.

Receipt of the supplemental declaration filed on 28 July, 2003, referencing the amendment filed on 8 August, 2001, is acknowledged.

The application is being forwarded to Technology Center 3700 for further processing with the preliminary amendment filed on 8 August, 2001, being part of the original disclosure, and to await a reply to the final Office action mailed on 10 February, 2004, the period for reply to which continues to run.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091201

DATE : April 30, 2007

TO SPE OF : ART UNIT 2622

SUBJECT : Request for Certificate of Correction on Patent No.: 7079189

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:

Approved in full

/Sinh Tran/
Supervisory Patent Examiner, Art Unit 2622

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 9/28/07

TO SPE OF : **Technology Center** 2616

09/923423

SUBJECT : Request for Certificate of Correction on Patent No.: 7088691 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.

Thank You For Your Assistance

Elisha Evans

Certificates of Correction Branch

Tel. No. 703-308-9390 EXT 110

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

2616

Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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CISLO & THOMAS
233 WILSHIRE BLVD
SUITE 900
SANTA MONICA, CA 90401-1211

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OFFICE OF PETITIONS

In re Application of :
Jeffrey Todd Tuller et al :
Application No. 09/923,469 : ON PETITION
Filed: August 6, 2001 :
Attorney Docket No. 01-9343 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 23, 2004, 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 February 11, 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)). The reply submitted on June 1, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed August 4, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 12, 2004, 2004.

The above-identified application is being revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.[1]

This matter is being referred to Technology Center AU 3764 for processing of the request for continued examination (RCE) under 37 CFR 1.114.

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

[1] Effective September 27, 2004, the phone number will be 571-272-3220.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

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225 FRANKLIN ST
BOSTON MA 02110

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APR 2 1 2003

OFFICE OF PETITIONS

In re Application of
John Macdonough, Brian Lovejoy, and Joel McCleary
Application No. 09/923,479
Filed: August 6, 2001
Attorney Docket No. 13413-002001
Title: CONCENTRATED KAVALACTONE BEVERAGE COMPOSITIONS

DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(a)

This is in response to the petition under 37 C.F.R. 1.47(a)[1], filed March 13, 2002.

The above-identified application was filed on August 6, 2001, identifying John Macdonough, Brian Lovejoy, and Joel McCleary as joint inventors. On September 13, 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 37 C.F.R. §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), a declaration executed by inventors Lovejoy, and McCleary. To make timely this reply, a four-month extension of time was requested.

1A grantable petition under 37 C.F.R. §1.47(a) requires:

(1) the petition fee of $130;
(2) a surcharge of either $65 or $130 if the petition is not filed at the time of filing the application;
(3) a statement of the last known address of the non-signing inventors;
(4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
(5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
(6) a declaration which complies with 37 CFR §1.63.

Petitioner has further included a statement of facts from an attorney of record.

Petitioner has stated on the record that he sent a copy of the declaration to signing inventor Lovejoy on October 1, 2001, requesting that each of the three joint inventors execute the document. On December 13, 2001, he sent a "reminder letter" to signing inventor Lovejoy. On three occasions, petitioner e-mailed the two signing inventors regarding "the papers". On March 5, 2002, signing inventor Lovejoy responded that the "formal papers" had been forwarded to the non-signing inventor. Petitioner states that since March 5, 2002, his attempts to contact the signing inventors via telephone or e-mail have been unsuccessful, and the non-singing inventor has not provided an executed declaration.

Petitioner has met requirements (1), (2), (3), and (6) above.

It is not clear whether petitioner is alleging that the address of the non-signing inventor is unknown, or that the non-signing inventor has refused to sign, as the petition is silent as to this point.

Assuming petitioner is asserting that the correct address of the inventor is not known, Petitioner has failed to meet requirement (5) above. There here is no indication that Rule 47 applicant attempted to verify the non-signing inventor's address or to determine his forwarding address, and to send the application papers to that address for consideration by non-singing inventor MacDonough[2]. No mention is made as to any search done for the non-signing inventor. If attempts to obtain a forwarding address or to locate the non-signing inventor by other means such as through E-mail, telephone, or the Internet continue to fail, then applicant will have provided the necessary proof required under 37 C.F.R. §1.47 that the inventor cannot be reached. Details of the efforts to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person with first hand knowledge of the details. Applicant should submit documentary evidence such as the results of an E-mail or Internet search.

Assuming petitioner is asserting that the non-signing inventor has refused to sign, petitioner has failed to meet requirements (4) and (5) above.

Regarding the fourth requirement above, petitioner has not shown that a *complete* copy of the application was sent to the non-signing inventor. Petitioner states that a two letters were sent to one of the non-signing inventor's, the first of which was accompanied only by the declaration. This establishes that the Rule 47 applicant did not present the non-signing inventor with a copy of the entire application. 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.[3] As only the declaration was sent to a party other than the non-signing inventor, the fourth requirement has not been met. On renewed petition, it should be established that a complete copy of the application was sent to the non-signing inventor.

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2 See MPEP 409.03(d).
3 See MPEP 409.03(d).

Furthermore, the language cited makes it clear that it is inventor Lovejoy, and not the petitioner, who claims to have forwarded the "formal papers[4]" to the non-signing inventor. As such, the petitioner does not have firsthand knowledge concerning this event. On renewed petition, the petitioner should first have a complete copy of the application sent to the non-signing inventor, and then submit a statement from a party having first-hand knowledge of this event.

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[5].

For these reasons, the petition under 37 C.F.R. §1.47(a) 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 1.47(a)."

The reply to this letter may be submitted by mail[6, 7], hand-delivery[8], or facsimile[9].

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

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

---

4 This must refer to the declaration, as the petitioner has established that the other portions of the application were not sent to the non-signing inventor.
5 In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

6 Commissioner for Patents, Box DAC, Washington, DC 20231.
7 **Note: as of May 1, 2003, the mailing address for addressing correspondence to the Office will change to: United States Patent and Trademark Office, PO Box 1450, Alexandria, VA, 22313-1450.**
8 Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.
9 (703) 308-6916, Attn: Office of Petitions.

UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 2 5 2003

OFFICE OF PETITIONS

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON MA 02110

In re Application of
John Macdonough, Brian Lovejoy, and Joel McCleary
Application No. 09/923,479
Filed: August 6, 2001
Attorney Docket No. 13413-002001
Title: CONCENTRATED KAVALACTONE BEVERAGE COMPOSITIONS

DECISION NOTING JOINDER OF INVENTOR AND DISMISSING PETITION UNDER 37 CFR §1.47(b) AS MOOT

This is in response to the renewed petition under 37 CFR §1.47(b)[1], filed August 15, 2003[2].

With the renewed petition, the petitioner has included a declaration which has been properly executed by the previously non-signing inventor.

Consequently, the renewed petition is dismissed as moot.

---

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 The original petition, filed March 22, 2003, was dismissed via a decision mailed April 21, 2003. With the renewed petition, petitioner has included a two-month extension of time to make timely this response.

In view of the joinder of the inventor, further consideration under 37 CFR §1.47(a) is not necessary. This application does not have any Rule 1.47 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)..

The application file is being forwarded to Technology Center 1700 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

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

Paper No. 5

SKJERVEN MORRILL LLP
25 Metro Drive, Suite 700
San Jose, CA 95110

MAR 11 2003

In re Application of KIM et al. Application No. 09/923,480 Filed: August 6, 2001 For: DIE BONDING EQUIPMENT	)))))	DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request filed on November 29, 2002, to withdraw the attorneys and agents of Skjerven Morrill LLP from representation under 37 C.F.R. § 10.40(b)(4).

The request states that withdrawal is mandatory because the practitioner in the above identified application has been discharged by the client. The request contains a clear indication that one attorney or agent of record is signing on behalf of all other attorneys and agents of record.

Accordingly, the request is **APPROVED**.

All future communications from the Office will be directed to the correspondence address indicated in the request.

Edward Westin

Edward Westin, Special Program Examiner
Technology Center 2800 - Semiconductors, Electrical
and Optical Systems and Components

cc: Mr. John Castellano
Harness, Dickey & Pierce
12355 Sunrise Valley Drive, Suite 350
Reston, VA 20191

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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Novak Druce + Quigg LLP
CityPlace Tower, 525 Okeechobee Blvd.
Fifteenth-Floor
WEST PALM BEACH, FL 33401

Mail Date: 04/21/2010

Applicant	: Victor S. Moore	: DECISION ON REQUEST FOR
Patent Number	: 7647021	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/923,506	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/06/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **869** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No.

Sughrue Mion Zinn
MacPeak & Seas PLLC
2100 Pennsylvania Avenue N W
Washington, DC 20037-3202

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MAY 04 2005

OFFICE OF PETITIONS

In re Patent No. 6,806,303	:	
Nohara et al.	:	
Issue Date: October 19, 2004	:	DECISION ON REQUEST
Application No. 09/923,533	:	FOR RECONSIDERATION OF
Filed: August 8, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No.	:	and
Q65728	:	NOTICE OF INTENT TO ISSUE
	:	CERTIFICATE OF CORRECTION
	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT (UNDER 37 C.F.R. § 1.705(d))," filed December 6, 2004. Patentees request that the patent term determination indicated in the Issue Notification (and in the patent) be corrected from one hundred eighty-one (181) days to two hundred fifty-three (253). For the reasons set forth herein, this petition is being treated in part as an application for patent term adjustment under § 1.705(b).

The application for patent term adjustment under § 1.705(b) is **DISMISSED AS UNTIMELY FILED**. Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136(a).

The request for reconsideration of patent term adjustment under § 1.705(d) is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred forty-nine **(249)** days.

On October 19, 2004, the above-identified application matured into U.S. Patent No. 6,806,303, with a patent term adjustment of 181 days. In response, patentees filed the instant request for reconsideration. Patentees agree with the Office's determination of a 253 day patent term adjustment in accordance with § 1.703(a)(1) for Office delay in mailing a first Office action under 35 U.S.C. 132. However, patentees assert that there should not have been a reduction of 4 days under § 1.704(b) for applicant delay in filing a response to the non-final Office action mailed June 18, 2003, as the federal government was closed on September 18 and 19, 2003 due to Hurricane Isabel. Further, patentees dispute the reduction of 68 days due to "Workflow-Drawings finished" as there were no drawings in the case.

On May 17, 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 249 days. This initial determination of patent term adjustment included calculation of the reduction of 4 days. PALM records indicate that the issue fee payment was received in the Office on August 4, 2004. No filing of an application for patent term adjustment preceded the payment of the issue fee. The period for filing an application for patent term adjustment requesting reconsideration of the initial determination of patent term adjustment at the time of mailing of the notice of allowance ended August 4, 2004. Accordingly, to the extent the instant application requests reconsideration of the 4 day reduction, it is appropriate to dismiss this petition as untimely filed.

As to the reduction of 68 days, a review of the PALM calculations for this application reveals that the initial determination of PTA of 253 days was reduced by 68 days for the submission of drawings after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10). However, a review of the application record supports a conclusion that no drawings (or any other paper, aside from the instant petition) were filed in this application after the mailing of the notice of allowance. There were no drawings in this application.

In view thereof, it is concluded that the patent should have issued with a revised Patent Term Adjustment of two hundred forty-nine (249) days.

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

The application file is being forwarded to the 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 TWO HUNDRED FORTY-NINE (249) days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Kery A Fries
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : March 22, 2006

TO SPE OF : ART UNIT 2627

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/923540 Patent No.: 6,987,717

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**.

STACY POWELL

Certificates of Correction Branch

703-308-9390 ext. 120

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

2627

Art Unit

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SCULLY SCOTT MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

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MAR 1 8 2005

OFFICE OF PETITIONS

In re Application of :
Olin Calvin et al :
Application No. 09/923,562 : ON PETITION
Filed: August 9, 2001 :
Attorney Docket No. VTN-0551 :

This is a decision on the petition under 37 CFR 1.137(a), filed September 20, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(a)."

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 15, 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 above-identified application became abandoned on January 16, 2004.

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, 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) 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; and (4) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) for an application filed prior to June 8, 1995. This petition lacks item (3).

The showing of record is inadequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the

outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

As to item (3), petitioner asserts that the delay was caused by nonreceipt of the non-final Office action dated December 15, 2003. A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to the applicant at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of a statement from petitioner stating that the Office action was not received and attesting to the fact that a search of the file jacket and docket records was conducted. 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. If petitioner does not maintain a record of receipt of papers from the Office, then petitioner must explain the procedures and controls utilized for the handling of his most important correspondence or Office action upon receipt.

If petitioner cannot provide evidence of the nature required above or simply does not wish to, petitioner may wish to consider filing a petition filing a petition under the unintentional provisions of 37 CFR 1.137(b). Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997).* An "unintentional" petition must be accompanied by the $1,370.00 petition fee.

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

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

By mail: Mail Stop PETITION
Commissioner for Patents
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

Telephone inquiries concerning this decision should 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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SCULLY SCOTT MURPHY & PRESSER
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

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SEP 0 7 2005

OFFICE OF PETITIONS

In re Application of	:	
Olin Calvin et al	:	
Application No. 09/923,562	:	ON PETITION
Filed: August 9, 2001	:	
Attorney Docket No. VTN-0551	:	

This is a decision on the renewed petition under 37 CFR 1.137(a), filed May 2, 2005, to revive the above-identified application.

The petition is **GRANTED**.

Petitioner asserts that the delay was caused by nonreceipt of the non-final Office action of December 15, 2003. In the renewed petition, petitioner has stated that he has searched the file jacket and docket records which failed to disclose receipt of the non-final Office action of December 15, 2003. Additionally, petitioner has supplied a copy of his docket report record and the assignee's docket report record to show where the December 15, 2003 Office action would have been docketed had it been received.

The showing of record is adequate to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a). Accordingly, the reply to the non-final Office action of December 15, 2003 is accepted as having been unavoidably delayed.

The second petition fee of $500.00 submitted May 2, 2005 is unnecessary and will be credited to Deposit Account No. 19-1013, as authorized.

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

This matter is being referred to Technology Center AU 1722 for appropriate action on the response received on September 20, 2004.

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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Daniel L. Dawes, Esq.
Myers, Dawes & Andras LLP
5252 Kenilworth Drive
Huntington Beach, CA 92649

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AUG 0 2 2004
OFFICE OF PETITIONS

In re Application of	:	
Robert A. Beach, et al.	:	
Application No. 09/923,582	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. Q105	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July12, 2004, to revive the above-identified application.

The petition is **GRANTED**.

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

The application file is being referred to Technology Center 1700.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

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MAY 15 2003

OFFICE OF PETITIONS

Steven F. Weinstock
Abbott Laboratories
D-377/AP6D
100 Abbott Park Road
Abbott Park, IL 60064-6050

In re Application of :
Todd J. Janus, et al :
Application No. 09/923,616 : ON PETITION
Filed: August 6, 2001 :
Attorney Docket No. 6715.US.02 :

This is a decision on the petition, filed May 9, 2003, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 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. A Notice of Abandonment was mailed November 14, 2002. In response, the present petition was 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 1614 for consideration of the amendment filed May 9, 2003.

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

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OFFICE OF PETITIONS

BRACEWELL & GIULIANI LLP
P.O. BOX 61389
HOUSTON TX 77208-1389

In re Application of	:	
GANGI, Frank J.	:	
Application No. 09/923,617	:	DECISION ON PETITION
Filed: December 13, 2004	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 53893-5055CT1	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed August 22, 2007, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(1) and MPEP § 708.02, Section IV: Applicant's Age must be accompanied by evidence showing that at least one of the applicants is 65 years of age, or more, such as a birth certificate or a statement by applicant. No fee is required

The instant petition includes the declaration of inventor Frank Gangi, attesting to his age. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

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

The application is being forwarded to the Technology Center Art Unit 3694 for action on the merits commensurate with this decision.

Monica A. Graves
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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STITES & HARBISON PLLC
424 CHURCH STREET
SUITE 1800
NASHVILLE TN 37219-2376

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OFFICE OF PETITIONS

In re Application of	:	
Marnett et al.	:	
Application No. 09/923,637	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. N-6138 RSM	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 19, 2006, to revive the above-identified application.

The petition is **GRANTED.**

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) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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TWO PERSHING SQUARE
2300 MAIN STREET
SUITE 1000
KANSAS CITY, MO 64108

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MAY 0 5 2004

OFFICE OF PETITIONS

In re Application of :
Roman J. Hamerski et al :
Application No. 09/923,647 : ON PETITION
Filed: August 7, 2001 :
Attorney Docket No. 12263.15 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 31, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed September 9, 2003, 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 does not *prima facie* placing the application in condition for allowance, no Notice of Appeal (and appeal fee), or a continuing application was timely filed. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on January 10, 2004.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

The application file is being referred to Technology Center AU 3712 for processing of the request for continued examination (RCE) under 37 CFR 1.114.

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
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OCT 26 2004

OFFICE OF THE DIRECTOR
TC 3600

MICHAEL S. NEUSTEL
2534 South University Drive
Suite No. 4
Fargo, ND 58103

In re application of
Diane A. Richardson
Application No. 09/923,668
Filed: August 06, 2001
For: E-COMMERCE ACCOUNT HOLDER SECURITY PARTICIPATION

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on August 30, 2004, under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age.

The petition is **GRANTED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a declaration signed by Ms.Richardson indicating that she is at least 65 years of age.

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 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
Patent Technology Center 3600
(703) 308-3868

SNM/pav: 10/18/04

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Paper No. 17

E. I. Du Pont De Nemours and Company
Legal Patent Records Center
Barley Mill Plaza, 25/1128
4417 Lancaster Pike
Wilmington, DE 19805

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MAR 2 4 2004
OFFICE OF PETITIONS

In re Application of :
Barry D. Olson et al. :
Application No. 09/923,697 : ON PETITION
Filed: August 7, 2001 :
Attorney Docket No. CN-0102USNA :

This is a decision on the petition under 37 CFR 1.137(b), filed March 15, 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 in reply to the non-final Office action mailed August 6, 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 November 7, 2003.

The application file is being forwarded to Technology Center AU 1772 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

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Paper No.

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO IL 60610

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OCT 01 2007

OFFICE OF PETITIONS

In re Patent No. 7,172,905	:	DECISION ON REQUEST
Mrksich et al.	:	FOR RECONSIDERATION OF
Issue Date: February 6, 2007	:	PATENT TERM ADJUSTMENT
Application No. 09/923,760	:	and
Filed: August 7, 2001	:	NOTICE OF INTENT TO ISSUE
Attorney Docket No. 7814/45	:	CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d)," filed April 2, 2007. Patentees request that the patent term adjustment indicated in the patent be corrected from four hundred sixty-eight (468) days to five hundred thirty-three (533) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of five hundred thirty-three (533) days.

On February 6, 2007, the above-identified application matured into U.S. Patent No. 7,172,905. The instant request for reconsideration filed April 2, 2007 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 468 days. Patentee disputes the reduction of 65 days due to "Workflow-Drawings finished" as no drawings were filed after the mailing of the notice of allowance.

A review of the PALM calculations for this application reveals that a period of reduction of 65 days was entered for applicants' submission of drawings after the mailing of the notice of allowance. See 37 C.F.R. § 1.704(c)(10). However, a review of the application record supports a conclusion that no drawings (or any other paper, aside from the instant petition and payment of the issue fee) were filed in this application after the mailing of the notice of allowance.

In view thereof, the patent term adjustment indicated in the patent should have been five hundred thirty-three (533) days.

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

The application file is being forwarded to the 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 **FIVE HUNDRED THIRTY-THREE (533)** days.

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 DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,172,905 B2

DATED : February 6, 2007

INVENTOR(S) : Mrksich 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 (468) days

Delete the phrase "by 468" and insert – by 533 days--

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,763	08/06/2001	Stephen Alan Smith	3177 P 342	9399

7590 07/17/2008
Wallenstein & Wagner, Ltd.
311 S. Wacker Drive, 53rd Floor
Chicago, IL 60606-6630

EXAMINER
HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
3727	

MAIL DATE	DELIVERY MODE
07/17/2008	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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080715

DATE : July 15, 2008

TO SPE OF : ART UNIT 3781

SUBJECT : Request for Certificate of Correction on Patent No.: 6,7332,875

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: /Anthony D Stashick/ Art Unit 3781

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080715

DATE : July 15, 2008

TO SPE OF : ART UNIT 3781

SUBJECT : Request for Certificate of Correction on Patent No.: 6,732,875

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

ERNEST C. WHITE, LIE
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: /Anthony D Stashick/ Art Unit 3781

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 5

STEVEN A. SWERNOFSKY
SWERNOFSKY LAW GROUP
P.O. BOX 390013
MOUNTAIN VIEW, CA 94039-0013

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FEB 8 2002

OFFICE OF PETITIONS

In re Application of :
Stephane Kasriel :
Application No. 09/923,809 :
Filed: August 7, 2001 :
Attorney Docket No. 155.1006.01 :

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 2100.

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

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Paper No. 4

E I DU PONT DE NEMOURS & COMPANY
LEGAL DEPARTMENT - PATENTS
1007 MARKET STREET
WILMINGTON, DE 19898

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NOV 2 8 2001

OFFICE OF PETITIONS

In re Application of	:	
Jon Lee Howell et al	:	DECISION GRANTING
Application No. 09/923,838	:	PETITION
Filed: August 6, 2001	:	
Attorney Docket No. CH2827 US NA	:	

This is a decision on the paper styled "Request For Corrected Filing Receipt" filed on October 1, 2001, which is being treated as a petition under 1.10(d), requesting that the above-identified application be accorded a filing date of August 6, 2001, rather than the presently accorded filing date of August 7, 2001.

Applicants request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on April 23, 2001, pursuant to 37 CFR 1.10. In support, applicants submit, inter alia, a copy of a U.S. Postal Service (USPS) record styled "Pickup Service Statement for Express Mail, Priority Mail, or Parcel Post" showing that a package bearing Express Mail label No. EL733094835US was picked up by the USPS from counsel's office. It is noted while the "Date of Pickup" on the record is not legible, it also includes a "Rodney Sq Sta USPS" stamp dated August 6, 2001. The same Express Mail receipt number appears on the original transmittal letter submitted with the present application.

Since the evidence from the USPS, namely, the Express Mail pickup Service Statement, corroborates a "date-in" of August 6, 2001, the petition is granted. A copy of the corrected Filing Receipt is enclosed.

The application is being returned to Technology Center AU 1764 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JJGJR.: 06-06

Paper No: __

DANN, DORFMAN,
HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA PA 19103-2307

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JUN 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Dautartas, et al.	:	
Application No. 09/923,842	:	ON PETITION
Filed: 7 August, 2001	:	
Attorney Docket No. ACT-142 (1117-6)	:	

This is a decision on a petition filed on 17 November, 2005, under 37 C.F.R. §1.137(b).

For the reasons set forth below, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record indicates:

- Petitioner failed to reply timely to the Notice of Allowance/Allowability and Fees Due mailed on 3 May, 2005, with reply due under a non-extendable deadline on or before 3 August, 2005;
- the application went abandoned by operation of law after midnight 3 August, 2005;
- the Office mailed the Notice of Abandonment on 14 October, 2005;
- Petitioner filed the instant petition on 17 November, 2005, with fee; reply in the form of fees in response to the 3 May, 2005, Notice of Allowance/Allowability and Fees Due, and made the statement of unintentional delay, and, thus, Petitioner appears to have satisfied the regulatory requirements under 37 C.F.R. §1.137(b).

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[1]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[2]

Delays in responding properly raise the question whether delays are unavoidable.[3] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[4] And the Petitioner must be diligent in attending to the matter.[5] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

Allegations as to
Unintentional Delay

---

[1] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[2] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[3] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply, showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

Because Petitioner appears to have satisfied the regulatory requirements, regulation, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to Publications Branch to be processed into a patent in due course.

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

John J. Gillon, Jr.
Senior 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, DC 20231
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JAN 14 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

SOCAL IP LAW GROUP
310 N. WESTLAKE BLVD. STE 120
WESTLAKE VILLAGE CA 91362

In re application of
Yuichiro Itakura et al.
Application No. 09/923,846
Filed: August 7, 2001
For: PURCHASING ON-LINE USING A PARAMETER IN A DATABASE

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on August 8, 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 A) above.

The attorneys associated with Customer Number 33356 do not correspond with those named in the Power of Attorney, thus creating confusion as to who is withdrawing. There are currently 23 attorneys of record in this application based upon the original declaration. The reference to a customer number appears to not include some of the attorneys of record. To alleviate this problem, it is suggested that the request be resubmitted and that such request specifically state that the signing attorney is signing on behalf of all attorneys of record in this application.

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

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ALEXANDRIA, VA 22313-1450
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MAY 10 2004

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TECHNOLOGY CENTER 3600

CUSHMAN, DARBY & CUSHMAN
1100 NEW YORK AVENUE, N.W.
9TH FLOOR, EAST TOWER
WASHINGTON, D.C. 20005-3918

In re application of:
Yuichiro Itakura et al.
Application No. 09/923,846
Filed: August 7, 2001
For: PURCHASING ON-LINE USING A PARAMETER IN A DATABASE

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the renewed petition filed on January 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 in the above-identified application is not approved because the request does not comply with items A) and B) above.

As to item A), the attorney making the request does not now have, and apparently never has had, power of attorney in this application.

This application was filed on August 7, 2001 and included an application data sheet listing a correspondence address associated with customer no. 27934 of which Mr. Sereboff is listed as an attorney. In response to a Notice to File Missing Parts mailed December 18, 2001 (signature of inventor missing on oath/declaration), applicant submitted a copy of the declaration filed in the parent application. It is noted that the file does not currently contain an originally filed oath/declaration. The declaration filed in the parent application granted power of attorney to attorneys associated with the law firm of Cushman & Darby at the address noted above. A change of address to customer no. 33356 was filed on August 20, 2002 and signed by Mr. Sereboff; however, the address change is improper because Mr. Sereboff does not have the right to change the address. As noted in MPEP § 601.03:

> Special care should be taken in continuation or divisional applications to ensure that any change of correspondence address in a prior application is reflected in the continuation or divisional application. For example, where a copy of the oath or declaration from the prior application is submitted for a continuation or divisional application filed under 37 CFR 1.53(b) and the copy of the oath or declaration from the prior application designates an old correspondence address, the Office may not recognize, in the continuation or divisional application, the change of correspondence address made during the prosecution of the prior application. Applicant is required to identify the change of correspondence address in the continuation or divisional application to ensure that communications from the Office are mailed to the current correspondence address. 37 CFR § 1.63(d)(4).

There is no record of power of attorney ever being given to the attorney making the request. The declaration filed on March 5, 2002 does not include a power of attorney for the requesting attorney, Steven Sereboff, or attorneys associated with either customer no. 27934 or 33356. Further, no separate paper conferring power of attorney to the attorney(s) making the request has been filed.

As to item B), the stated reason for withdrawal is that the assignee (client) has terminated the relationship with Mr. Sereboff. The "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorney(s). It is unclear who the "client" is since Mr. Sereboff was not granted power of attorney by the inventors. A statement under 37 CFR 3.73(b) to establish ownership must be provided.

For this decision only a copy of this correspondence will be sent to the SoCal IP Law Group.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868

SNM/mjz: 5/3/04

cc: SOCAL IP LAW GROUP
310 N. WESTLAKE BLVD. STE 120
WESTLAKE VILLAGE CA 91362

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Paper No. 18

CUSHMAN, DARBY & CUSHMAN
1100 NEW YORK AVENUE, N.W.
9TH FLOOR, EAST TOWER
WASHINGTON DC 20005-3918

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OFFICE OF PETITIONS

In re Application of	:	
Yuichiro Itakura et al	:	
Application No. 09/923,846	:	DECISION GRANTING PETITION
Filed: August 7, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 880-24-026	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 16, 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 November 7, 2002 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.

The Power of Attorney submitted with the instant petition is not in compliance with 3.73(b). Therefore, the Power of Attorney and the request for change of address has been placed in the above-identified application file.

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

The application file is being forwarded to Technology Center AU 3627.

Karen Ceasy

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

cc:
J.C. PATENTS
4 VENTURE, SUITE 250
IRVINE, CA 92618

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 04/11/07

TO SPE OF : ART UNIT 2136

SUBJECT : Request for Certificate of Correction for Appl. No.: **09/923847** Patent No.: **7096355**

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**.

Angela Green
Certificates of Correction Branch
703.308.9380 ext. 123

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

2136
Art Unit

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)
6700555	2004-03-02	09923859	2001-08-07	99CR029/KE

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	//keppele//	Date (YYYY-MM-DD)	2008-06-26
Name	Kyle Eppele	Registration Number	34155

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Patent No. 6700555
Issue Date: March 2,2004
Application No. 09923859
Filed: August 7,2001
Attorney Docket No. 99CR029/KE

:

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

:

This is a decision on the electronic petition, filed June 26,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 26,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No. 9

PARSONS HSUE & DE RUNTZ LLP
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

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MAR 17 2004

OFFICE OF PETITIONS

In re Application of
Chang et al.
Application No. 09/923,874
Filed: August 6, 2001
Attorney Docket No. SNDK.254US0

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed July 11, 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 August 6, 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 Office sincerely apologizes for the inconvinience caused the petitioner in this matter.

This application is being forwarded to Technology Center Art Unit 2188 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-0482.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

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OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,861,804	:	
Issued: 1 March, 2005	:	
Application No. 09/923,877	:	
Filed: 6 August, 2001	:	
Atty Docket No. DF-00200	:	

This is a decision in reference to the communication filed on 4 November, 2005, which is treated as a request 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**.

Petitioners should note that a $130.00 processing fee is required for the present request under 37 CFR 3.81(b). The processing fee will be charged to counsel's deposit account, No. 08-1275.

Telephone inquires concerning this matter may be directed to the undersigned at 571.272.3231. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at 703.305.8309.

The file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] See Official Gazette of 22 June, 2004.

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MINNEAPOLIS, MN 55402-0903

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OFFICE OF PETITIONS

In re Application of	:	
Kim R. Smith et al	:	
Application No. 09/923,931	:	DECISION GRANTING PETITION
Filed: August 7, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 163.1471US01	:	

This is a decision on the petition, filed November 30, 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 11, 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 1751 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

Paper No. 6

NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA GA 30309-3915

COPY MAILED
MAR 29 2004
OFFICE OF PETITIONS

In re Application of
Stephen J. Pratt
Application No. 09/923,978
Filed: August 7, 2001
Attorney Docket Number: 13215.0019U1
Title: MULTI-BAND TRANCEIVERS WITH REDUCED FREQUENCY SOURCES FOR DIGITAL TRANSMISSIONS

DECISION ON PETITION
UNDER 37 C.F.R. §1.137(F)

This is a decision on the petition filed February 23, 2004, pursuant to 37 C.F.R. §1.137(f)[1], to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

(1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication[2];
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
(3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign or an international application on August 5, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days

1 The decision on the original erroneously identified the original petition as being filed under 37 C.F.R. §1.137(b).
2 See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at http://www.uspto.gov/web/forms/index.html.

subsequent to the filing of the subject application in either an international application or a foreign country.

Unfortunately, a Notice of Rescission of Nonpublication Request has not been filed with the Office. As such, Petitioner has not rescinded the previous nonpublication request.

Accordingly, 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)."

On renewed petition, Petitioner should submit a Notice of Rescission of Nonpublication Request. A form which Petitioner might find useful may be found at http://www.uspto.gov/web/forms/sb0036.pdf

The reply to this letter may be submitted by mail[3], hand-delivery[4], or facsimile[5].

The reply should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. The Petitioner may wish to consider telephoning the undersigned at the number provided below to confirm that the documents were delivered to the undersigned. Please note that the delivery process within the PTO can take as much as three weeks.

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

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
4 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
5 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.

UNITED STATES 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

NEEDLE & ROSENBERG, P.C.
SUITE 1000
999 PEACHTREE STREET
ATLANTA GA 30309-3915

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JUN 0 7 2004

OFFICE OF PETITIONS

In re Application of
Stephen J. Pratt
Application No. 09/923,978
Filed: August 7, 2001
Attorney Docket Number: 13215.0019U1
Title: MULTI-BAND TRANCEIVERS WITH REDUCED FREQUENCY SOURCES FOR DIGITAL TRANSMISSIONS

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(F)

This is a decision on the renewed petition filed April 6, 2004, pursuant to 37 C.F.R. §1.137(f)[1], to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

(1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication[2];
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
(3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The original petition was submitted on February 23, 2004 and dismissed via the mailing of a decision on March 29, 2004 for failure to submit a Notice of Rescission of Nonpublication Request.

1 The decision on the original erroneously identified the original petition as being filed under 37 C.F.R. §1.137(b).
2 See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at http://www.uspto.gov/web/forms/index.html.

In the original petition, Petitioner set forth that the instant nonprovisional application is the subject of an application filed in either a foreign or an international application on August 5, 2002. However, the United States Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in either an international application or a foreign country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. §1.22(b)(2)(B)(iii) and 37 C.F.R. §1.213(c) for failure to timely notify the Office of the filing of either a foreign application or an application under a multilateral international agreement that requires publication of applications 18 months after filing.

The petition under 37 C.F.R. §1.137(f) is **GRANTED**.

Petitioner has submitted the notification of either a foreign or an international filing, paid the petition fee, and has made the proper statement of unintentional delay.

The instant petition has been found to be in compliance with 37 C.F.R. §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 C.F.R. §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), filed with the original application papers, has been rescinded.

After this decision is mailed, the application will be forwarded to Technology Center 2600.

Telephone inquiries concerning *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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DENIS ROBITAILLE
AXCELIS TECHNOLOGIES INC
108 CHERRY HILL DR
BEVERLY MA 01915-1053

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SEP 20 2004

OFFICE OF PETITIONS

In re Application of	:	
Perel, et al.	:	
Application No. 09/924,004	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. 00-SM6-262	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 8, 2004, to revive the above-identified application.

The petition under 37 CFR 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)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action mailed September 11, 2003. This Office action set a shortened statutory period for reply of three months. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 12, 2003. A Notice of Abandonment was mailed on June 28, 2004.

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

The instant petition lacks item (2), the petition fee. Petitoner's Deposit Account lacked a sufficient balance to charge the $1,330 petition fee. On renewed petition, petitioner must submit the petition fee in full. Petitioner is reminded that effective October 1, 2004, the petition fee will increase to $1,370.

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

Cliff Congo

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

MORGAN & FINNEGAN TRANSITION TEAM
C/O LOCKE LORD BISSELL & LIDDELL
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

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OFFICE OF PETITIONS

In re Application of	:	
Stephen Lange Ranzini	:	
Application No. 09/924,005	:	DECISION ON PETITION
Filed: August 7, 2001	:	TO WITHDRAW
Attorney Docket No. 11004.0003-00000	:	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 7, 2009.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Morgan & Finnegan Transition Team has been revoked by the applicant of the patent application on June 25, 2009. 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 undersigned at 571-272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/AMW/
April M. Wise
Petitions Examiner
Office of Petitions

cc: STEPHEN LANGE RANZINI
101 N. MARTIN STREET
#1004
AN ARBOR, MI 48104

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
09/924,005	08/07/2001	Stephen Lange Ranzini	3892-4003

CONFIRMATION NO. 1961

POWER OF ATTORNEY NOTICE

27123
MORGAN & FINNEGAN Transition Team
C/O Locke Lord Bissell & Liddell
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

OC000000036681341

Date Mailed: 06/30/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 06/25/2009.

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

/skiflemariam/

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Duane Morris, LLP
Attn : William H. Murray
One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7396

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DEC 0 2 2003

OFFICE OF PETITIONS

ON PETITION

In re Application of
DePhillipo et al.
Application No. 09/924,011
Filed: August 7, 2001
Attorney Docket No. E0543-00011

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 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 Application (Notice) mailed September 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 November 15, 2001.

The application file is being forwarded to the Office of Initial Patent Examination Division 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
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Paper No. 9

Paul D. Durkee
DALY, CROWLEY & MOFFORD, LLP
Suite 101
275 Turnpike Street
Canton, MA 02021-2310

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MAY 22 2003

OFFICE OF PETITIONS

In re Application of	:
Bruce E. MCNAIR	:
Application No. 09/924,022	: DECISION GRANTING PETITION
Filed: August 7, 2001	: UNDER 37 CFR 1.137(f)
Attorney Docket No. ATT-020PUS	:

This is a decision on the petition, filed May 12, 2003, 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 July 31, 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 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. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of August 28, 2003 was mailed on May 22, 2003.

Any inquiries concerning this decision may be directed to B. Dayoan at (703) 308-3865 or, in her absence, to the undersigned at (703) 305-8680.

This application is being forwarded to Technology Center Art Unit 2681 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO, P.C.
ONE FINANCIAL CENTER
BOSTON, MA 02111

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JUL 0 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Christian L. Kuiawa et al	:	
Application No. 09/924,050	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. 18133-097	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 7, 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 July 14, 2004, 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) were obtained. Accordingly, the above-identified application became abandoned on October 15, 2004.

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

This matter is being referred to Technology Center AU 2115 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Kenyon Schuett
Suite 230, 858 Happy Canyon Road
Castle Rock, CO 80108

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AUG 2 5 2005

OFFICE OF PETITIONS

In re Application of
Farrand et al.
Application No. 09/924,101
Filed: August 7, 2002
Attorney Docket No. 1231-220

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed August 4, 2005, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the non-final Office action mailed November 5, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on February 6, 2004. A Notice of Abandonment was mailed on June 17, 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.

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

Technology Center Art Unit 1638 will be informed the application has been revived so that the examiner may consider the amendment filed August 4, 2005, 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
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Paper No. 18

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON VA 22201-4714

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of
Kornbluth, et al.
Application No. 09/924,102
Filed: August 8, 2001
Attorney Docket No. 1579-470
For: REAPER PROTEIN

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b) to revive the above-identified application, filed June 18, 2004.

The petition under 37 CFR 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. If petitioner responds within two months of the mail date of this decision, no additional fee will be due. However, if petitioner takes longer than two months to submit a reconsideration petition, petitioner will need to purchase extensions of time under 37 CFR 1.136(a). The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." Petitioners are advised that this is not a final agency decision.

This application became abandoned for failure to timely reply within an extendable three month period to the non-final Office action, mailed November 4, 2003. No extensions of time being obtained and no reply being received in the Office, the above-identified application became abandoned on February 5, 2004. A Notice of Abandonment was mailed on June 16, 2004.

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;

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

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy requirement (1). No reply is present in the application file. Petitioners are requested to submit another copy of their reply. If the reply is a continuing application, please specify the application number assigned to it, as well as its filing date.

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
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions – E. Shirene Willis

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

#22

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. 22

NIXON & VANDERHYE, PC
1100 N GLEBE ROAD
8TH FLOOR
ARLINGTON VA 22201-4714

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DEC 1 0 2004

OFFICE OF PETITIONS

In re Application of
Kornbluth, et al.
Application No. 09/924,102
Filed: August 8, 2001
Attorney Docket No. 1579-470
For: REAPER PROTEIN

DECISION ON PETITION

This is a decision on the reconsideration petition under 37 CFR § 1.137(b) to revive the above-identified application, filed November 16, 2004.

This application became abandoned for failure to timely reply within an extendable three month period to the non-final Office action, mailed November 4, 2003. No extensions of time being obtained and no reply being received in the Office, the above-identified application became abandoned on February 5, 2004. A Notice of Abandonment was mailed on June 16, 2004.

Applicants have submitted a reply in the form of an amendment, an acceptable statement of the unintentional nature of the delay in responding to the November 4, 2003 non-final Office action, and the petition fee.

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

After the mailing of this decision the application will be forwarded to Technology Center 1600 for consideration of the amendment filed June 18, 2004.

Telephone inquiries concerning this decision should 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
WASHINGTON, D.C. 20231
www.uspto.gov

TIMOTHY H. VAN DYKE
VAN DYKE & ASSOCIATES, P.A.
1630 HILLCREST STREET
ORLANDO FL 32803

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JUN 2 6 2002

OFFICE OF PETITIONS

In re Application of
Kevin C. Carter (Dec'd)& Diane
Carter (Legal Rep.), Michael Esch,
Paul LaRochelle & Gina Scurti
Application No. 09/924,110
Filed: August 7, 2001
For: MATERIALS AND METHODS FOR IMPROVED BONE TENDON BONE TRANSPLANTATION

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed March 29, 2002.

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 legal representative. 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 items (1) and (2) set forth above.

As to item (1), rule 47 applicant must demonstrate with documented evidence that the legal representative of deceased inventor Kevin C. Carter 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 the legal representative was presented with a copy of the complete application papers. If the legal representative was not presented with a copy of the application papers, then the legal representative could not attest that he/she has "reviewed and understands the application papers" and rightfully refused to execute the documents which he/she was requested to sign. Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers to the legal representative. Did the legal representative receive the application papers? Unless petitioner can show that a copy of the application papers was presented to the legal representative

then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the legal representative last known address, 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. Further, rule 47 applicant must state whether Diane Carter is the only legal representative that could sign the declaration on behalf of deceased inventor Kevin Carter. 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 (or legal representative'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.

Whenever an omitted inventor (or legal representative) gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

As to item (2), when an application is filed on behalf of a legal representative, the oath or declaration for the patent application must be signed by the available joint inventors on behalf of the legal representative. The name, residence, post office address and citizenship of the legal representative need to be stated in the declaration in addition to that of the deceased inventor. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the available joint inventors on behalf of themselves and the legal representative is REQUIRED. See MPEP 409.03(a).

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 the undersigned.

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 22202

Telephone inquiries related to this decision should be directed to Karen Creasy at (703) 305-8859.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petition
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. 12

MCANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, #34
CHICAGO IL 60661

COPY MAILED

JAN 21 2003

OFFICE OF PETITIONS

In re Application of
Kevin C. Carter (Dec'd) & Diane Carter (Legal Rep.), Michael Esch, Paul LaRochelle & Gina Scurti
Application No. 09/924,110
Filed: August 7, 2001
Attorney Docket No. 1915/13921us03

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the request for reconsideration under 37 CFR 1.47(a), filed December 23, 2002.

The petition is granted.

Petitioner has shown that the legal representative for deceased inventor Kevin C. Carter 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 legal representative 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 Karen Creasy at (703) 305-8859.

This application is being forwarded to Office of Initial Patent Examination Division for further preexamination processing.

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

DIANE CARTER
8502 NW 35TH ROAD
GAINESVILLE, FL 32606

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JAN 2 1 2003

OFFICE OF PETITIONS

In re Application of
Kevin C. Carter (Ded'd) & Diane Carter (Legal Rep.),
Michael Esch, Paul LaRochelle & Gina Scurti
Application No. 09/924,110
Filed: August 7, 2001
For: MATERIALS AND METHODS FOR IMPROVED BONE TENDON
BONE TRANSPLANTATION

Dear Mrs. Carter:

You are named as a legal representative of deceased joint inventor Kevin C. Carter, 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 legal representative 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 Karen Creasy at (703)305-8859. 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
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

MCANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, #34
CHICAGO, IL 60661

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOFFMAN WASSON & GITLER, P.C
CRYSTAL CENTER 2, SUITE 522
2461 SOUTH CLARK STREET
ARLINGTON VA 22202-3843

COPY MAILED

AUG 2 0 2004

OFFICE OF PETITIONS

In re Application of Allan, et al. Application No. 09/924,115 Filed: August 8, 2001 Attorney Docket No. A-7519.SMP/CAT For: FRACTURING METHOD USING AQUEOUS OR ACID BASED FLUIDS	: : : : : : :	ON PETITION

This is a decision on the petition filed July 7, 2004 to correct assignment data on Form PTOL-85. The petition will be treated under 37 CFR 1.183 to waive 37 CFR 3.81.

The petition under 37 CFR 1.83 to waive 37 CFR 3.81 is **GRANTED**.

The requested data will be printed on the patent if this can be accomplished without substantial disruption to the issue process. However, if the printing of the patent has progressed to the point where the requested data cannot be included in the printed patent, petitioner can request a Certificate of Correction under 37 CFR 1.322.

After the mailing of this decision, the application file will be forwarded to Publications Division.

Any questions concerning this matter may be directed to the undersigned at (703) (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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)
6595644	2003-07-22	09924141	2001-08-07	100.212

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Leonard Tachner/	Date (YYYY-MM-DD)	2007-10-04
Name	Leonard Tachner	Registration Number	26344

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6595644
Issue Date: July 22,2003
Application No. 09924141
Filed: August 7,2001
Attorney Docket No. 100.212

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

This is a decision on the electronic petition, filed October 4,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of October 4,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

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

JOHN P. IWANICKI
BANNER & WITCOFF, LTD.
28 STATE STREET, 28TH FLOOR
BOSTON, MA 02109

COPY MAILED

JUL 2 3 2002

OFFICE OF PETITIONS

In re Application of
Sierra et al.
Application No. 09/924,156
Filed: August 7, 2001
Attorney Docket No. 11325-84822

DECISION DISMISSING PETITION

This is a decision on the petition under 37 CFR 1.47(a), filed on April 12, 2002, requesting that 3 inventors be allowed to file the application on behalf of themselves and the remaining joint-inventor who allegedly refuses to join in this application.

The petition is **DISMISSED.**

Background

There are 4 joint-inventors for the claimed invention in this application: Rafael A. Sierra ("Sierra"), Mirko Mirkov ("Mirkov"), Kathleen I. McMillan ("McMillan"), and Jennifer R. Lloyd ("Lloyd"). The application as filed on August 7, 2001 included a declaration that was not executed as required by 37 CFR 1.51(b)(2) and as specified in 37 CFR 1.63. A Notice to File Missing Parts of Nonprovisional Application was mailed on September 13, 2001 ("9/13/01 Notice") stating, *inter alia*, that the declaration was not signed. Applicants were given an extendable, non-statutory, 2-month period within which to submit a properly signed oath/ declaration and the other missing items.[1] The instant petition was filed in response to the 9/13/01 Notice, and encloses a request for a 5-month extension of time and the requisite fee for filing these items.[2]

Petition

The instant petition, which presents a "Joint Declaration for Patent Application" signed by only Sierra, Mirkov and Lloyd, requests that these joint-inventors be allowed to file this application on behalf of themselves and McMillan who allegedly refuses to join in this application.

Sierra, Mirkov and Lloyd may file this application on behalf of themselves as well as McMillan, provided that a ***bona fide* attempt** has been made to present to McMillan for signature a copy of

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[1] See MPEP 710.02(d) (Aug. 2001). The 2-month period for reply to a Notice of Missing Parts is not identified in the Notice as a statutory period subject to 35 U.S.C. 133. Thus, a maximum of 5 months may be obtained under 37 CFR 1.136(a), extending the due date for the missing items to 4/15/02, a Monday.

[2] The petition and the accompanying missing items indicated in the 9/13/01 Notice are timely submitted. See *id.*

the **entire** application, **including the specification, claims, drawings**, and oath/declaration;[3] and that McMillan refuses to join in this application. To show that McMillan has refused to join in this application despite a *bona fide* attempt made to present to her for signature a copy of the **entire** application, the petition must include, *inter alia*, a **statement of facts** concerning the circumstances of the presentation of the application papers to McMillan at her last known address,[4] and her subsequent refusal.[5]

The instant petition and the supporting declaration of Sierra ("Sierra Declaration"), the first-named inventor in this application, delineate how certain documents, including "a copy of the application,"[6] had been forwarded to McMillan on November 30, 2001 for signature, and that the latter has received the copy of the application[7] along with other documents but refused to sign the application papers sent to her.[8]

A copy of the transmittal letter for the November 30, 2001 mailing mentioned in the Sierra Declaration is also enclosed with the petition. The Office notes that contrary to the statements in the petition and the Sierra Declaration that "a copy of the application" was sent to McMillan, apparently only a "Background of the Invention"[9] and "copies of case study (photos)"[10] were

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[3] MPEP section 409.03(d) (Aug. 2001) REFUSAL TO JOIN (A refusal by an inventor to sign an oath/declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join in the application unless it is clear that the inventor understands exactly what he is being asked to sign and refuses to accept the application papers.); also citing In re Gray, 115 U.S.P.Q. 80 (Comm'r Pat. 1956) (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/declaration is directed.).

[4] 37 CFR 1.47(a); also see MPEP section 409.03(e) (Aug. 2001) (An application filed under 37 CFR 1.47 must state the last known address of the non-signing inventor . . . at which the inventor customarily receives mail, . . . [o]rdinarily . . . the last known residence).

[5] The statement(s) of facts must be made and signed by those who presented the application papers to McMillan/concluded that McMillan refused to join in/to whom McMillan's refusal to join in was made. See MPEP section 409.03(d) (Aug. 2001).

[6] Petition: page 1, paragraph 2; page 2, last sub-paragraph under paragraph 3, lines 1-2.
Sierra Declaration: page 1, paragraph 2.

[7] Petition, page 2, last sub-paragraph under paragraph 3, lines 5-6.
Sierra Declaration, page 1, paragraph 3, 2nd sentence.

[8] Petition: page 1, paragraph 2, last 2 lines; page 2, last sub-paragraph under paragraph 3, last 2 lines; page 3, top 2 lines.
Sierra Declaration: page 1, paragraph 3, last sentence; page 2, paragraph 4.

[9] 11/30/01 transmittal letter, item no. 4.

[10] 11/30/01 transmittal letter, item no. 5.

provided to McMillan in addition to the application declaration/power of attorney, an assignment, and the filing receipt for the application.[11] Therefore, the Sierra Declaration has not supplied any evidence that a copy of the **entire application, including the specification, claims, drawings**, was mailed to McMillan with the November 30, 2001 transmittal letter, or at any other time before or after that date. Consequently, the Office is unable to conclude that the Sierra Declaration constitutes the "statements of facts" required for granting a petition under 37 CFR 1.47(a).[12] The instant petition is thus dismissed.

Options

To prevent abandonment of this application,[13] Applicants must file within **TWO (2) MONTHS** from the mailing date of this decision:[14]

-an oath/declaration properly executed by **all 4** joint-inventors including McMillan;[15] **or**,

-a request for reconsideration of this decision (renewed petition under 37 CFR 1.47(a)) (no fee), that:

-includes appropriate **statement(s) of facts**,[16] stating that the **entire application papers, including the specification, claims, drawings**, and oath/ declaration, were presented to McMillan at her last known address; and of the facts relied upon to conclude that McMillan refuses to join in this application;[17] and

-is addressed as follows:

---

[11] Items 1-3 in 11/30/01 transmittal letter. There are only 5 items listed in this transmittal.

[12] See *supra* note 3.

[13] See 37 CFR 1.53(f) (If an application which has been accorded a filing date . . . does not include an oath or declaration by the applicant pursuant to §1.63 . . . , applicant will be notified and given a period of time within which to . . . file an oath or declaration . . . and pay the surcharge required by §1.16(e) **to avoid abandonment**.).

[14] Unless proper extension(s) of time under 37 CFR 1.136(a) is (are) obtained.

[15] **To be submitted directly to the Office of Initial Patent Examination** (which issued the 9/13/01 Notice) **by attaching copies of the 9/13/01 Notice and this Decision**.

[16] See *supra* note 5. If a renewed petition under 37 CFR 1.47(a) is still proper, the "Joint Declaration for Patent Application" enclosed with the instant petition **does not need to be resubmitted**.

[17] To ensure grantability of the renewed petition under 37 CFR 1.47(a), the signing inventors must, if not having already done so, **provide** McMillan with a copy of the entire application papers **and** allow her reasonable time to review before deciding whether to sign.

by mail/by hand:	Assistant Commissioner for Patents Attn: Office of Petitions Crystal Plaza Four, Suite CP4-3C23 2201 South Clark Place Arlington, VA 22202
by fax:	(703)308-6916 Attn: Office of Petitions

Finally, the Office acknowledges receipt with the instant petition of an authorization to charge Deposit Account No. 19-0733 for: the $370 basic filing fee for this application, the $42 for 1 independent claim in excess of 3, the $65 surcharge for late filing of the declaration, all in small entity amounts, and the $130 petition fee; as well as receipt on May 6, 2002 of an assignment document for recordation in the USPTO, and on June 19, 2002 of an Information Disclosure Statement.

Telephone inquiries concerning this decision should 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

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

JOHN P. IWANICKI
BANNER & WITCOFF, LTD.
28 STATE STREET, 28TH FLOOR
BOSTON, MA 02109

COPY MAILED

NOV 1 3 2002

OFFICE OF PETITIONS

In re Application of
Sierra et al.
Application No. 09/924,156
Filed: August 7, 2001
Attorney Docket No. 11325-84822

: DECISION GRANTING PETITION
: AND ACCORDING STATUS UNDER
: 37 CFR 1.47(a)

This decision concerns the renewed petition under 37 CFR 1.47(a), filed on September 19, 2002.

The petition is **GRANTED.**

The April 12, 2002 petition under 37 CFR 1.147(a) was dismissed on July 23, 2002 for failing to show that a copy of the entire application (specification including claims; drawings) had been provided to the non-signing inventor, Kathleen I. McMillan ("McMillan"), before concluding that she refused to join in this application.

The instant renewed petition includes a declaration by a Dona-Maria Dean, assistant to one of the joint-inventors, clarifying that a copy of the entire application papers, including the specification (with claims) and the drawings, was indeed mailed to McMillan on November 30, 2001. Moreover, the Sierra Declaration enclosed with the April 12, 2002 petition points out that during a telephone inquiry from Sierra on March 7, 2002, McMillan confirmed receipt of the application papers and expressly refused to sign the papers.

In view of the above, the Office concludes that a *bona fide* attempt has been made to present to McMillan, for review and signature, a copy of the entire application papers, and that McMillan nevertheless refused to join in this application. The §1.47(a) petition is thus granted.

No fee is owed.

The "Joint Declaration for Patent Application" submitted with the April 12, 2002 petition ("4/12/02 Declaration") is hereby accepted.

The application is now complete.

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to McMillan at her last known address provided in the petition:

1958 Main Street
Concord, MA 01742

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

The application is being returned to the Office of Initial Patent Examination for further processing with respect to the 4/12/02 Declaration, and for issuance of a filing receipt if one has not been mailed. Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763.

for D Wood
Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Commissioner
for Patents

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

GABRIEL P KATONA
GOODWIN PROCTOR
599 LEXINGTON AVENUE 40TH FLOOR
NEW YORK NY 10022

COPY MAILED

MAY 01 2003

OFFICE OF PETITIONS

In re Application of
Jentsch
Application No. 09/924,157
Filed: August 7, 2001
Attorney Docket No. 0828-022

DECISION ON PETITION

This is a decision on the petition filed April 1, 2002, and supplemented October 3, 2002, which are collectively being treated as a petition under 37 CFR 1.182 to treat the German priority document present on filing as a non English language specification, and accord those application papers a filing date of August 7, 2001.

The petition is granted.

Inspection of the certified translation filed August 27, 2001, of the certified priority document present on August 7, 2001, (German 100388917) reveals that the German priority document contained a specification, at least one claim, and a drawing referred to in that specification, and as such, is entitled a filing date.

The translation of the priority document filed on August 27, 2001, as it was filed after August 7, 20001 will not be further used for purposes of obtaining a filing date, but may be employed as the necessary English language translation.

This application is being returned to the Office of Initial Patent Examination for correction of USPTO archival records for this application by scanning the certified copy of German Application No. 100388917 as the United States application papers, and accord these papers a filing date of August 7, 2001, with an indication that 5 claims and 1 sheet of drawing were present on filing.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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Paper No.

GOODWIN PROCTER L.L.P
103 EISENHOWER PARKWAY
ROSELAND, NJ 07068

COPY MAILED
JUL 0 8 2004
OFFICE OF PETITIONS

In re Application of: :
Arndt Jentzsch :
Application No. 09/924,157 : DECISION ON
Filed: August 7, 2001 : PETITION
Attorney Docket Number: 0828-022 :

This is in response to the Amendment Under 37 CFR 1.312, filed June 14, 2004, requesting correction of Office records. The Amendment is properly treated as a petition to correct the filing date of the application.

The petition is **granted**.

A review of Office records reveal that Applicant filed a petition to correct the filing date of the application on April 1, 2002. A Decision granting the petition was mailed on May 1, 2003. The Decision granting the petition corrected the filing date of the application to August 7, 2001. The file was forwarded to the Office of Initial Patent Examination; however, the filing date remained unchanged.

Applicant files the instant correspondence and requests correction of Office records to reflect the filing date of the application as August 7, 2001, in accordance with the petition Decision mailed May 1, 2003.

The filing date has been corrected to August 7, 2001. A copy of a Corrected Filing Receipt is enclosed with this Decision.

The application is an image file wrapper and, as such, no forwarding of the file is required. Office records have been corrected to reflect the filing date of the application as August 7, 2001. Notice of this Decision will be sent to Publishing Division and the file will be processed into a patent in due course.

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

Derek L. Woods
Petitions Attorney
Office of Petitions

Enclosure: Corrected Filing Receipt

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

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SEP 2 3 2004

OFFICE OF PETITIONS

In re Application of :
Quintin T. Phillips, et al. :
Application No. 09/924,200 :
Filed: August 7, 2001 :
Attorney Docket No. 10002608-1 :

ON PETITION

This is a decision on the petition, filed September 3, 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 3, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

Telephone inquiries relating to this decision should be directed to the undersigned at (703) 305-9220. The application is being referred to Technology Center AU 2852 for further processing of the request for continued examination under 37 CFR 1.114 filed September 3, 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).

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

PATREA L. PABST
HOLLAND & KNIGHT, LLP
SUITE 2000, ONE ATLANTIC CENTER
1201 WEST PEACHTREE STREET, N.E.
ATLANTA, GA 30309-3400

COPY MAILED

APR 29 2002

OFFICE OF PETITIONS

In re Application of
Wendi V. Rodrigueza et al.
Application No. 09/924,222
Filed: August 7, 2001
For: LIPOSOMAL COMPOSITIONS, AND METHODS OF USING LIPOSOMAL COMPOSITIONS TO TREAT DISLIPIDEMIAS

: DECISION GRANTING
:STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed March 26, 2002.

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 Irvin Dingle at (703) 306-5684.

This application is being forwarded to the Initial Patent Examination Unit.

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

UNITED STATES
PATENT AND
TRADEMARK OFFICE

MAR 25 2003

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

#11

SCHAFER LAW OFFICE, P.A.
727 TORCHWOOD CIRCLE
NEW BRIGHTON, MN 55112-2538

In re Application of	:	
Wilbur Eidson et al	:	DECISION ON PETITION
Serial No.: 09/924,233	:	
Filed: August 8, 2001	:	
For: Automatic Veterinary Medicament	:	
Delivery System	:	

This is in response to applicants' petition filed March 5, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, IV. 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 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

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)
6685677	2004-02-03	09924244	2001-08-07	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

◉ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Sole Patentee			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/Christopher H. Green/	Date (YYYY-MM-DD)	2008-03-11
Name	Christopher H. Green		

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

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
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In re Patent No. 6685677
Issue Date: February 3,2004
Application No. 09924244
Filed: August 7,2001
Attorney Docket No. LDP-7923

:

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

:

This is a decision on the electronic petition, filed March 11,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 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 11,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

APR 09 2004

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

Fish & Richardson PC
225 Franklin St
Boston, MA 02110

Paper No.

In re Application of Kevin R. Heath Serial No. : 09/924,275 Filed : August 8, 2001 For : Tubular Medical Endoprostheses	: DECISION ON PETITION : TO WITHDRAW : HOLDING OF : ABANDONMENT :

This is a decision on a request filed March 4, 2004 to review the holding of abandonment mailed January 13, 2004, for failure to respond to the Office action mailed July 2, 2003. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response, a copy of a three-month extension of time request, and a copy of a PTO stamped receipt dated January 2, 2004. It is noted that the original communication has been located and matched with the instant file. Any inconvenience is deeply regretted.

In view of the above, the Notice of Abandonment mailed January 13, 2004, 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 January 2, 2004.

Summary: Holding of Abandonment Withdrawn.

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

ak/03/29/04

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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JUL 08 2004

Paper No. 21

In re Application of HEATH, KEVIN R.
Appl. No.: 09/924,275
Filed: August 08, 2001
For: TUBULAR MEDICAL ENDOPROSTHESIS

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed December 19, 2002, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that a document entitled Proprietary Material, filed December 19, 2002, be expunged from the record. Petitioner states that either (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The information in question has been determined by the undersigned to not be material to the examination of the instant application.

Applicant is required to retain the expunged material(s) for the life of any patent which issues on the above-identified application.

The expunged material has been removed from the official file.

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

Enclosure: Proprietary Material Not Open to Public

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

Mail Date: 04/21/2010

Applicant	: Vincent Bryan	: DECISION ON REQUEST FOR
Patent Number	: 7641692	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/924,298	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/08/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1827** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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Joseph J. Laks
Thomsen, Licensing, LLC
2 Independence Way
P.O. Box 5312
Princeton, NJ 08543-5312

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In re Application of	:	
Edouard Francois et al.	:	
Application No. 09/924,322	:	DECISION ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. PF000079	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 29, 2008, 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 March 26, 2008, as required by the Notice of Allowance and Fee(s) Due, mailed December 26, 2007. Accordingly, the date of abandonment of this application is March 27, 2008. A Notice of Abandonment was mailed on April 23, 2008.

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 $1440 and the publication fee of $300, (2) the petition fee of $1540, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

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

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

Carl Friedman
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

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OCT 0 6 2006
OFFICE OF PETITIONS

In re Application of	:	
Shunpei Yamazaki, et al.	:	
Application No. 09/924,337	:	ON PETITION
Filed: August 6, 2001	:	
Attorney Docket No.: 07977-211003	:	

This is a decision on the petition, filed October 5, 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 June 20, 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 relating to this decision should be directed to the undersigned at (571) 272-3204.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new 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
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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

FEB 24 2003

STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

In re Application of	:
Patrick Y. Lam et al	:
Serial No.: 09/924,381	: WITHDRAWAL OF ABANDONMENT
Filed: August 8, 2001	:
Attorney Docket No.: DM-6904-A	:

This is in response to the facsimile transmission which is being treated as a petition under 37 CFR 1.181, filed December 4, 2002, requesting withdrawal of abandonment based on a timely filed reply.

A review of the file history shows the examiner mailed a non-Final Office action to applicants on May 6, 2002 setting a three month shortened statutory period for reply. Upon failure to receive a reply a Notice of Abandonment was mailed to applicants on November 29, 2002. Applicants state that a timely reply was filed on July 9, 2002, and provide a copy of the response with Certificate of mailing dated July 9, 2002, and an Office date stamped return postcard dated July 16, 2002, showing that the Office received the reply. In view of the evidence presented it is concluded that applicants replied in a timely manner. The Notice of Abandonment was mailed in error and is withdrawn and the application restored to pending status with the mailing of this decision.

Applicants' petition is **GRANTED**.

The application will be forwarded to the examiner for further consideration

Should there be any questions regarding 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.

Bruce M. Kisliuk
Director, Technology Center 1600

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

October 14, 2003

Colleen J. McKiernan
Brown, Martin, Haller & McClain
1660 Union ST.
San Diego, Ca 92101-2926

In re application of:
Colin Oloman DECISION ON PETITION
Serial No.: 09/924,404
Filed: August 7, 2001
For: ELECTROLYTIC GENERATION OF NITROGEN

This is a decision on the petition received on October 22, 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 mailed August 29, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned October 30, 2001.

On October 22, 2002, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice to File Missing Parts mailed on August 29, 2001.

The petition is hereby GRANTED.

The documents received on April 23, 2002, will be used to complete the above application for release to Technology Center 1638.

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

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

October 14, 2003

Colleen J. McKiernan
Brown, Martin, Haller & McClain
1660 Union ST.
San Diego, Ca 92101-2926

In re application of:
Colin Oloman DECISION ON PETITION
Serial No.: 09/924,404
Filed: August 7, 200l
For: ELECTROLYTIC GENERATION OF NITROGEN

This is a decision on the petition received on October 22, 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 mailed August 29, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned October 30, 2001.

On October 22, 2002, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice to File Missing Parts mailed on August 29, 200l.

The petition is hereby GRANTED.

The documents received on April 23, 2002, will be used to complete the above application for release to Technology Center 1638.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GORDON & REES LLP
101 W BROADWAY
SUITE 1600
SAN DIEGO CA 92101

COPY MAILED

MAR 0 7 2005

OFFICE OF PETITIONS

In re Application of	:	
Oloman, et al.	:	
Application No. 09/924,404	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. 6510-PA04D	:	

This is a decision on the petition filed on February 18, 2005, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper reply to the final Office action mailed May 5, 2004. 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 proper response having been received, the above-identified application became abandoned on August 6, 2003. A Notice of Abandonment was mailed on January 18, 2005.

On petition, petitioner paid the petition fee and made the proper statement of unintentional delay. In addition, petitioner submitted both an Amendment and a Notice of Appeal. The examiner has determined that the Amendment fails to *prima facie* place the application in condition for allowance. Accordingly, the Notice of Appeal will be entered.

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 $510 extension of time fee submitted with the petition on February 18, 2005 was subsequent to the maximum period obtainable for reply (November 5, 2004), this fee has been refunded to petitioner's Deposit Account No. 50-1990.

In addition, the Terminal Disclaimer filed with the instant petition is not required since the application was not filed prior to June 8, 1995. Therefore, the Terminal Disclaimer has not been accepted and will not be entered, but will remain in the application file. The Terminal Disclaimer fee of $65 has been refunded to petitioner's deposit account.

Please be advised that the two month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)) runs from the date of this decision.

The application file is being returned to Group Art Unit 1742 to await for applicants' submission of the appeal brief in triplicate.

Telephone inquiries specific 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 4

Shireen Irani Bacon
Skjerven Morrill MacPherson LLP
Suite 700
25 Metro Drive
San Jose, CA 95110

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FEB 27 2002

OFFICE OF PETITIONS

In re Application of
Kevin Surace et al.
Application No. 09/924,420
Filed: August 7, 2001
Attorney Docket No. M-5273-2C US

DECISION GRANTING PETITION

This is a decision on the petition filed under 37 CFR 1.53, in response to the "Notice of Omitted Items" mailed September 20, 2001.

The instant application was filed August 7, 2001 and a filing date was accorded. However, according to the Notice of Omitted Items, the application papers submitted did not include pages 80-99, 102, 103 and 109 of the specification.

Petitioner has provided a postcard receipt which itemizes the contents of the original application packet. The postcard receipt was date stamped by the USPTO on August 7, 2001 and acknowledges, inter alia, the number of pages included in the original application to be 113 (79 pages specification, 24 pages of Appendices A & B, 27 pages claims, 1 page Abstract).

Petitioners' postcard receipt does not properly identify the total number of pages of specification and appendix filed on August 7, 2001. The receipt lists 113 pages, but the files contains 130 pages of specification and appendix. However, petitioners' postcard receipt does identify the total number of pages of claims as 27 and only 26 pages are present in the file. Accordingly, it is concluded that page 109 was filed on August 7, 2001, and subsequently misplaced in the USPTO.

Accordingly, the petition is **GRANTED**.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of August 7, 2001, using the application papers received in the Office on that date and the specification resubmitted on petition filed November 15, 2001. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Patricia Faison-Ball at (703) 305-4497.

Patricia Faison-Ball
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11/1/2006

TO SPE OF : ART UNIT 2600 (2621)

SUBJECT : Request for Certificate of Correction on Patent No.: 7,058,577

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 delete claim 27 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:

Column 46
claim 27 lines 32-34
should not be deleted

SPE

2626
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Specifically, the printed patent contains the following errors for which a Certificate of Correction is respectfully requested:

Inventors Section

In item (75), after "James P. Giangola", "Oakland, CA" should be changed to --San Jose, CA--.

References Cited Section

In item (56), under "U.S. Patent Documents", "5,751,793 A 5/1998" should be changed to --5,751,793 A 10/1997--.

References Cited Section

In item (56), under "U.S. Patent Documents", "6,112,177 A 8/2000" should be changed to --6,112,177 A 11/2000--.

Column 46

Claim 27, lines 32-34 should be deleted.

OCT 03 2006

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MANELLI DENSION & SELTER PLLC
7TH FLOOR
2000 M STREET, N.W.
WASHINGTON DC 20036-3307

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JAN 0 8 2008

OFFICE OF PETITIONS

In re Application of	:	
Cannon et al.	:	
Application Number: 09/924482	:	ON PETITION
Filing Date: 08/09/2001	:	
Attorney Docket Number: Cannon	:	
125-113-73	:	

This is a decision on the "PETITION TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT," which is treated as a petition under 37 CFR 1.181, filed on November 28, 2007.

This application became abandoned on November 6, 2004, for failure to timely file a response to the Office action requiring Restriction and/or Election mailed on October 5, 2004, which set a one (1) month shortened statutory period for reply. Notice of Abadonment was mailed on September 21, 2007.[1]

Petitioners assert that a response to the Office action requiring restriction and/or election was timely filed on December 3, 2004. In support, petitioners have presented a mail log purporting to show the date the reply to the restriction requirement was filed with the USPTO as well as a declaration from counsel's administrative assistant, Lamont King, as well as a copy of a return receipt intended to show that the reply to the restriction requirement was filed in the USPTO.

The U.S. Patent and Trademark Office (Office) file is the official record of the papers filed in this application. A review of the papers filed reveals that no response filed on December 3, 2004, to the Office action mailed on October 5, 2004, was ever received in the USPTO. An applicant alleging that a

[1] Although no copy of the Notice of Abandonment is located in the USPTO's Image File Wrapper, petitioner states that the Notice of Abandonment has been received, and a review of the Office PALM records reveal that a Notice of Abandonment was mailed on September 21, 2007.

paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The fact that petitioners believe that the reply was (or should have been) timely received in the Office, is not more persuasive than the date the papers are shown to have been received in the official file.

As such, the mail log and affidavit serves as evidence only of what petitioner's *intended* to file on December 3, 2004, not of what was actually filed or received in the USPTO on that date.

In this regard, the "RETURN RECEIPT FROM PTO FOR INDICATED ITEMS" cannot serve as evidence of receipt in the USPTO of the Response to Restriction Requirement because the receipt has not been stamped by USPTO with the date of receipt of the item(s) listed thereon.

In accordance with MPEP 503, a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

It is therefore suggested that petitioners file a renewed petition, accompanied by a copy of the itemized receipt in compliance with MPEP 503, showing the "Office date" stamp from the USPTO.

Additionally, as no copy of the Notice of Abandonment is located in the official file, it is requested that petitioners submit a copy of the Notice of Abandonment with any renewed petition.

The petition is **DISMISSED.**

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision. **This period may not be extended.**[2]

[2] 37 CFR 1.181(f).

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

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

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

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

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

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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2000 M STREET, N.W.
WASHINGTON DC 20036-3307

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MAR 06 2008

OFFICE OF PETITIONS

In re Application of	:	
Cannon et al.	:	DECISION ON PETITION
Application Number: 09/924482	:	
Filing Date: 08/09/2001	:	
Attorney Docket Number: Cannon	:	
125-113-73	:	

This is a decision on the petition filed on January 24, 2008, under 37 CFR 1.137(b)[1] to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover

---

[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 Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d)).

letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned on November 6, 2004, for failure to timely file a response to the Office action requiring Restriction and/or Election mailed on October 5, 2004, which set a one (1) month shortened statutory period for reply. Notice of Abandonment was mailed on September 21, 2007.[2]

On November 28, 2007, a petition to withdraw the holding of abandonment was filed. On January 8, 2008, the petition to withdraw the holding of abandonment was dismissed.

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

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

---

[2] Although no copy of the Notice of Abandonment is located in the USPTO's Image File Wrapper, petitioner states that the Notice of Abandonment has been received, and a review of the Office PALM records reveal that a Notice of Abandonment was mailed on September 21, 2007.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional.

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned

application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (E. D. Mich. 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23.

Likewise, as William H. Bollman et al., and the attorneys associated with the law firm of Manelli, Denison & Selter PLLC, (collectively hereinafter "the attorneys of record"), were counsel of record at the time of abandonment, the attorneys of record should explain why this application became abandoned while it was under their control and what efforts the attorneys of record made to further reply of itself and with whom this matter was discussed outside of the attorneys of record, the inventor, and any assignee(s). Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), the attorneys of record, the inventor, any assignee(s), and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons then involved in the prosecution of the application, including the attorneys of record, the inventor, any assignee(s), and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (E.D. Mich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

(A) the date that the applicant first became aware of the abandonment of the application; and
(B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

As such, the petition under 37 CFR 1.137(b) is **DISMISSED.**

Any renewed petition may be addressed as follows:

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

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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7TH FLOOR
2000 M STREET, N.W.
WASHINGTON DC 20036-3307

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JUN 2 0 2008

OFFICE OF PETITIONS

In re Application of	:	
Cannon et al.	:	DECISION ON PETITION
Application Number: 09/924482	:	
Filing Date: 08/09/2001	:	
Attorney Docket Number: Cannon	:	
125-113-73	:	

This is a decision on the "RENEWED PETITION UNDER 37 CFR 1.137(B) TO WITHDRAW ERRONEOUS HOLDING OF ABANDONMENT," filed on May 6, 2008, which, under the circumstances of this case, is treated as a renewed petition under 37 CFR 1.137(b).[1]

The petition is **GRANTED**.

---

[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 Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d)).

This application became abandoned on November 6, 2004, for failure to timely file a response to the Office action requiring Restriction and/or Election mailed on October 5, 2004, which set a one (1) month shortened statutory period for reply. Notice of Abandonment was mailed on September 21, 2007.[2]

On November 28, 2007, a petition to withdraw the holding of abandonment was filed. On January 8, 2008, the petition to withdraw the holding of abandonment was dismissed. On January 24, 2008, a petition under 37 CFR 1.137(b) was filed. On March 6, 2008, the petition was dismissed.

Receipt of the response to the restriction requirement is acknowledged.

The application is being referred to Technology Center Art Unit 2614 for further processing.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[2] Although no copy of the Notice of Abandonment is located in the USPTO's Image File Wrapper, petitioner states that the Notice of Abandonment has been received, and a review of the Office PALM records reveal that a Notice of Abandonment was mailed on September 21, 2007.

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
ATTN: PATENT DOCKETING 32ND FLOOR
P.O. BOX 7037
ATLANTA GA 30357-0037

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OFFICE OF PETITIONS

In re Patent No. 6,761,257
Application No. 09/924,521
Filing Date: August 9, 2001
Issue Date: July 13, 2004
Attorney Docket No. S247 1380.1

DECISION GRANTING PETITION

This is a decision on the renewed petition under 37 CFR 1.182, filed October 17, 2008, requesting issuance of duplicate Letters of Patent for the above-identified patent.

The petition is **granted**.

The file record discloses that the above-cited application matured into U.S. Patent No. 6,761,257 on July 13, 2004. Petitioner maintains, however, that the patent was received but lost thereafter.

In view of the facts set forth in the petition, it is concluded that the original Letters of Patent was destroyed after receipt. The Office of Data Management is directed to issue duplicate Letters of Patent.

The fee for the instant petition is $400.00. Deposit account 09-0528 will be charged an additional $270.00 accordngly.

Any questions concerning this decision may be directed to the undersigned at (571)272-3222. Any questions concerning issuance of the duplicate Letter of Patent should be directed to Niomi Farmer, Office of Data Management at (703) 308-9250 extension 129.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc: Niomi Farmer—Office of Data Management FAX: 571-270-9753

Ex. Tran

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 09/924,521

Paper No.: _____

DATE : 2/14/06

TO SPE OF : ART UNIT 1724

SUBJECT : Request for Certificate of Correction on Patent No.: 6974070

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Lamonte M. Newsome
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:

Pat Ryan
SPE

1725
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOLLAND & KNIGHT LLP
2099 PENNSYLVANIA AVE, N.W.
WASHINGTON DC 20006

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AUG 25 2006
OFFICE OF PETITIONS

In re Application of	:	
Flannery, et al.	:	
Application No. 09/924,649	:	DECISION ON PETITION
Filed: August 8, 2001	:	TO WITHDRAW
Attorney Docket No. 072677.00001	:	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 15, 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 Kevin A. Bulford on behalf of himself.

All attorneys/agents associated with this application remain of record.

The correspondence address of record remains unchanged.

There is an outstanding Office action mailed February 08, 2006 that requires a reply from the applicant.

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

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

ACCENTURE CHICAGO 28164
BRINKS HOFER GILSON & LIONE
P O BOX 10395
CHICAGO IL 60610

MAILED

JUN 07 2010

OFFICE OF PETITIONS

In re Patent No. 7,631,327
Issued: December 8, 2009
Application No. 09/924,669
Filed: August 8, 2001
Attorney Docket No: 10022/142

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. § 1.705(d) filed on December 18, 2009, requesting that the patent term adjustment indicated on the above-identified patent be corrected from 865 days to 1535 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred seventy-four (1274) days is **GRANTED to the extent indicated herein**.

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on August 9, 2004 and ends on August 12, 2007, the day before the RCE was filed, and the B delay considering the 369 days of overlap is 1099 (not 1100) days. See 35 U.S.C. 154(b)(1)(B)(i). Non-overlapping B delay is 730 days. Further, patentee fails to account for the filing of a Notice of Appeal on November 10, 2008. The 260 days of the over three year period consumed by appellate review, beginning on November 10, 2008 and ending on July 28, 2009, the date the Notice of Allowance was mailed, are not included in the B delay. *See* 35 U.S.C. § 154(b)(1)(B)(ii). As such, the patent term adjustment is 1274 (1039 + 8 + 41 "A delay days" + 1099 "B delay days" - 369 days overlap - 260 days excluded - 284 applicant delay days, not 1535 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or

patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred seventy-four (1274)** days.

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

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,631,327 B2

DATED : December 8, 2009

INVENTOR(S) : Kelly L. Dempski

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 (865) days

Delete the phrase "by 865 days" and insert – by 1274 days--

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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Hae-Chan Park
McGuireWoods, LLP
Suite 1800
McLean, VA 22102-4215

SEP 9 2004

In re Application of Bo-Sung Kim
Application no. 09/924,677
Filed: 9 August 2001
Attorney Docket No. 6192.0170.AA

: DECISION ON PETITION

This is a decision on the petition filed under 37 C.F.R. §1.144 on January 20, 2004, to partially withdraw the restriction of claims 17, 18, 22 and 23.

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

MPEP § 808.01(a) indicates that, "**Election of species should not be required if the species claimed are considered clearly unpatentable (obvious) over each other**." (emphasis in original). Claims 1 to 5 (Group I) and claims 17, 18, 22 and 23 are not patentably distinct over each other and therefore should not be restricted over each other.

Claims 17, 18, 22 and 23 will be rejoined to the Group I claims for further prosecution in this application.

Sharon A. Gibson, Director
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
Washington, D.C. 20231
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Paper No. ~~5~~ 6

Dorsey & Whitney
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402-1498

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FEB 2 0 2003

OFFICE OF PETITIONS

In re Application of	:	
Mark Ross	:	
Application No. 09/924,743	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. 14101	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 18, 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 September 14, 2002, which set a period for reply of (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were submitted. Accordingly, the above-identified application became abandoned on November 15, 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 f Petiti ns
Office f the Deputy C mmissi ner
for Patent Examinati n 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

Date: August 17, 2006

FILE COPY

Patent No.: 7,058,065 B2
Issued : June 6, 2006
Inventor : Musoll, et al.
Title : **METHOD AND APPARATUS FOR PREVENTING UNDESIRABLE PACKET DOWNLOAD WITH PENDING READ/WRITE OPERATIONS IN DATA PACKET PROCESSING**
Docket No: MIPS.0176-00-US

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction, for the above-identified patent under the provision of Rule 1.322 or 1.323.

Respecting the alleged error, in the Assignee, or Firm is printed solely in accordance with the PTOL-85b (Issue Fee Transmittal), submitted at the time of payment of the base issue fee. Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 or 255 and the Code of Federal Regulation (C.F.R.) 1.322 or 1.323.

In view of the foregoing your request is hereby denied.

Any petition under 37 CFR 1.183 should be directed to the attention of the Assistant Commissioner for Patents, using the following mailing address or FAX number.

By Mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Washington, D.C. 22313-1450

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

If the Petition under 37 CFR 1.182 (required fee currently $130), is filed and granted, the Patentee would be entitled to certificate of correction under 37 CFR 1.323 (required fee currently 100).

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response must be filed within a four week period.

Elisha Evans
Newman Cecelia
Decisions & Certificates
of Correction Branch
(703) 308-9390

HUFFMAN LAW GROUP, P.C.
1832 N. CASCADE AVE.
COLORADO SPRINGS CO 80907-7449

CBN/eme

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MAIL

MAR 14 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS, TEXAS 75202-3789

In re application of:
Kohli, et al.
Application No. 09/924,785
Filed: August 8, 2001
For: METHOD AND SYSTEM FOR SUPPORTING WIRELESS NETWORK SERVICES IN A NETWORK THROUGH ANOTHER NETWORK HAVING A DIFFERENT NETWORK TECHNOLOGY

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on January 14, 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 satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All of the attorneys/agents listed in the request have been withdrawn.

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 A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: Jessica W. Smith
Alcatel USA
Intellectual Property Department
3400 W. Plano Parkway, MS LEGL2
Plano, Texas 75075

UNITED STATES PATENT AND TRADEMARK OFFICE

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JAMES R. ABNEY, ESQ.
KOLISCH HARTWELL, P.C.
200 PACIFIC BUILDING
520 S.W. YAMHILL STREET
PORTLAND OR 97204

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MAR 18 2010

In re Patent No. 6,852,504 :
Issue Date: February 8, 2005 :
Application No. 09/924,797 : NOTICE
Filed: August 8, 2001 :
Attorney Docket No. MBHB01-1071 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28 submitted on December 15, 2009.

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

/KOC/
Karen Creasy
Petitions Examiner
Office of Petitions

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Paper No.

BRINKS HOFER GILSON & LIONE /
YAHOO! OVERTURE
P.O. BOX 10395
CHICAGO IL 60610

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AUG 3 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Doemling et al.	:	DECISION ON
Application No. 09/924,808	:	PETITION
Filed: August 8, 2001	:	
Attorney Docket No. 12729/237	:	
(Y02109US00)	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b), filed May 21, 2007.

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed October 28, 2005. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. No proper reply having been received and no extension of time obtained the application became abandoned effective January 29, 2006. A courtesy Notice of Abandonment was mailed on March 21, 2007.

On petition, petitioner submitted a Request for Continued Examination (RCE) and submission under §1.114 (in the form of an amendment); paid the petition fee; and made the required statement of unintentional delay.

Technology Center AU 2152 has been advised of this decision. The application is, thereby, forwarded to the examiner for

consideration of the RCE and submission submitted on petition filed May 21, 2007.

Telephone inquiries concerning 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
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JJGJr: 06-03

Paper No: 7

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JUN 0 9 2003

OFFICE OF PETITIONS

FRANCIS E. LEVERT
1725 EAST MAGNOLIA AVENUE
KNOXVILLE TN 37917

In re Application of:	:	
LeVert, et al.	:	ON PETITION
Filed: 9 August, 2001	:	
Application No. 09/924,829	:	
Docket No. (None)	:	

This is a decision on the petition filed herein via FAX on 28 and 29 May, 2003, under 37 C.F.R. §1.137(b)[1] alleging unintentional delay, and in light of the allegations considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.[2]

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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.)

[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 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

The petition:

- as considered under 37 C.F.R. §1.181 is **GRANTED** and the petition fee is waived; and
- under 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record indicates that:

- it appeared that the Applicant failed to file a timely and proper response to the Notice to File Corrected Application Papers mailed on 13 September, 2001, with a reply due (absent an extension of time) on or before 13 November, 2001;
- Notice of Abandonment was mailed on 16 May, 2003;
- contemporaneously with the instant petition, Petitioner submitted copies of:

  --his docket/notebook records reflecting materials forwarded to and received from the Office in the context of prosecution of the instant applications; and

  --his reply to the 13 September, 2001, Notice to File Corrected Application Papers (the "reply requirement under 37 C.F.R. §1.137.

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).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive

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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] 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.

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.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] 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).[6]

And the Petitioner must be diligent in attending to the matter.[7]

(Moreover, it long has been the position of the Office that the use of the filing periods (such as in 37 C.F.R. §1.137(b)) as an "extension of time" is an "abuse" of the procedures for reviving abandoned applications, and is contrary to the meaning and intent of the regulation.[8] The Office has indicated that petitions to revive must be filed promptly after the applicant becomes aware of the abandonment.[9] Such 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]))

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[4] 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.

[5] 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).

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

[7] 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.

[8] See: In re Application of S, 8 USPQ2d 1630, 1632 (Comm'r Pats. 1988). Where there is a question whether the delay was unintentional, the petitioner must meet a burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 C.F.R. §1.137(b). See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[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.

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[11]

As to the Request to Withdraw
the Holding of Abandonment

Petitioner makes a satisfactory showing of non-receipt.

CONCLUSION

Accordingly, the petition:

- as considered under 37 C.F.R. §1.181 to withdraw the holding of abandonment hereby is **granted**, the 16 May, 2003, Notice of Abandonment is **vacated**, and the petition fee is waived; and

- under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The instant application is being forwarded to OIPE for further processing before being forwarded for examination in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

[11] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 14

SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

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APR 07 2005

OFFICE OF PETITIONS

In re Application of	:	
Kirven, Betty	:	
Application No. 09/924,835	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. A8867	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 4, 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 April 15, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on July 16, 2003. A Notice of Abandonment was mailed November 18, 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 Technology Center 2800 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

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON DC 20037

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JUN 27 2005

OFFICE OF PETITIONS

In re Application of	:	
Kirven, Betty	:	
Application No. 09/924,835	:	DECISION GRANTING PETITION
Filed: August 8, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. A-8867	:	

This is a decision on the petition, filed June 17, 2005, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional 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 August 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-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 October 6, 2005 accompanies this decision on petition.

This matter is being referred to the Publications Division to await payment of the issue fee.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070716

DATE : July 16, 2007

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction on Patent No.: 7,029,895

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:

PONNATHAPU ACHUTAMURTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE: P. Achutamurthy Art Unit 1652

UNITED STATES PATENT AND TRADEMARK OFFICE

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GENENTECH, INC.
1 DNA WAY
SOUTH SAN FRANCISCO, CA 94080

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Donogh P. O'Brien et al :
Application No. 09/924,857 :
Filed: August 8, 2001 :
Attorney Docket No. P0378P3C6 :

This is a decision on the petition filed, May 5, 2005 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed June 25, 2004, which set a shortened statutory period for reply of three (3) months. Three months extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 26, 2004.

The above-identified application is being revived solely for purposes of continuity with a Request For Continued Examination (RCE) filed on May 5, 2005.

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

This matters is being referred to Technology Center AU 1644 for further processing.

Irvin Dingle
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.
09/924,870	08/09/2001	Dieter Busch	741124-77	3696

22204 7590 10/15/2003
NIXON PEABODY, LLP
8180 GREENSBORO DRIVE
SUITE 800
MCLEAN, VA 22102

EXAMINER
GUADALUPE, YARITZA

ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 10/15/2003

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

09/124,870

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.

EXAMINER

ART UNIT	PAPER
	8

DATE MAILED:

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

Commissioner for Patents

See attachment

PTO-90C (Rev.04-03)

DECISION REGARDING THE PETITION REQUESTING THE WITHDRAWAL OF THE FINALITY OF THE OFFICE ACTION OF AUGUST 08, 2003

The Petition to Withdraw the Finality of the Office Action of August 08, 2003, filed September 05, 2003, has been treated as a Request to Withdraw the Finality of the Office Action of August 08, 2003.

The request has been **GRANTED**.

The file record indicates that the Restriction Requirement of October 31, 2002 was improper. Accordingly, the finality of the Office Action of August 8, 2003 is hereby withdrawn.

The time to file a response to the Office Action continues to run from August 08, 2003. Such response must comply with 37 CFR 1.111. Extensions of this time are governed by under 37 CFR 1.136(a).

Mr. David Safran was informed of this decision in a telephone conversation on October 09, 2003.

The application file is being returned to the Technology Center 2800 Central Files where it awaits a response from the applicant.

DG
10/9/2003

Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

DECISION REGARDING THE PETITION REQUESTING THE WITHDRAWAL OF THE FINALITY OF THE OFFICE ACTION OF AUGUST 08, 2003

The Petition to Withdraw the Finality of the Office Action of August 08, 2003, filed September 05, 2003, has been treated as a Request to Withdraw the Finality of the Office Action of August 08, 2003.

The request has been **GRANTED**.

The file record indicates that the Restriction Requirement of October 31, 2002 was improper. Accordingly, the finality of the Office Action of August 8, 2003 is hereby withdrawn.

The time to file a response to the Office Action continues to run from August 08, 2003. Such response must comply with 37 CFR 1.111. Extensions of this time are governed by under 37 CFR 1.136(a).

Mr. David Safran was informed of this decision in a telephone conversation on October 09, 2003.

The application file is being returned to the Technology Center 2800 Central Files where it awaits a response from the applicant.

DG
10/9/2003

Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

The United States Patent and Trademark Office has changed certain mailing addresses!

Effective May 1, 2003

Use the address provided in this flyer after May 1, 2003 for any correspondence with the United States Patent and Trademark Office (USPTO) in patent-related matters to organizations reporting to the Commissioner for Patents.

DO NOT USE the Washington DC 20231 and P.O. Box 2327 Arlington, VA 22202 addresses after May 1, 2003 for any correspondence with the USPTO even if these old addresses are indicated in the accompanying Office action or Notice or in any other action, notice, material, form, instruction or *other* information.

Correspondence in patent-related matters to organizations reporting to the Commissioner for Patents must now be addressed to:

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Special Mail Stop designations to replace Special Box designations

Also effective May 1, 2003, the USPTO is changing the special Box designations for Patents and Trademarks to corresponding Mail Stop designations (*e.g.*, "Box 4" will now be "Mail Stop 4").

For further information, see *Correspondence with the United States Patent and Trademark Office*, 68 *Fed. Reg.* 14332 (March 25, 2003). A copy of the *Federal Register* notice is available on the USPTO's web site at http://www.uspto.gov/web/menu/current.html#register

A listing of specific USPTO mailing addresses (See Patents – specific) will be available on the USPTO's web site on April 15, 2003 at http://www.uspto.gov/main/contacts.htm

Persons filing correspondence with the Office should check the rules of practice, the Official Gazette, or the Office's Internet Web site (www.uspto.gov) to determine the appropriate address and Mail Stop Designation (if applicable) for all correspondence being delivered to the USPTO via the United States Postal Service (USPS)

Questions regarding the content of this flyer should be directed to the Inventor Assistance Center at (703) 308-4357 or toll-free at 1-800-786-9199

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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DIW Sep-06

BERKELEY LAW & TECHNOLOGY GROUP
1700NW 167TH PLACE
SUITE 240
BEAVERTON OR 97006

COPY MAILED
SEP 0 7 2006
OFFICE OF PETITIONS

In re Application of	:	
Rong-Ji Liu	:	DECISION ON PETITION TO
Application No. 09/924,883	:	WITHDRAW HOLDING OF
Filed: 8 August, 2001	:	ABANDONMENT
Attorney Docket No. 112.P14006	:	

This is a decision on the petition filed on 11 July, 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 respond to the Notice of Allowance and Fee(s) Due mailed on 4 October, 2005, which set a three (3) month statutory period for reply. Notice of Abandonment was mailed on 24 February, 2006.

Petitioner asserts that the Notice mailed on 4 October, 2005, was not received. Petitioner further asserts that the Notice was not received because it was not mailed to petitioner's current correspondence address. Specifically, a Revocation and Power of Attorney and Change of Correspondence Address was filed on 26 July, 2005, but the Notice mailed on 4 October, 2005, was not sent to the new correspondence address.

A review of the official file reveals that the Revocation and Power of Attorney and Change of Correspondence address was filed on 26 July, 2005, but was not entered until 13 June, 2006. Additionally, the Notice mailed on 4 October, 2005, was not mailed to the new correspondence address. As such, the Notice was not mailed to the proper address as a result of Office error.

Additionally, petitioner has submitted a copy of the docket record where the non-received Office action 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).

As such, there was an irregularity in the mailing of the Notice mailed on 4 October, 2005.

The Office apologizes for any inconvenience to petitioner.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file is being referred to Technology Center 2600 technical support staff for remailing of the Notice mailed on 4 October, 2005. The period for reply will be reset from the mailing date thereof.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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1700NW 167TH PLACE
SUITE 240
BEAVERTON OR 97006

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OFFICE OF PETITIONS

In re Application of	:	
Rong-Ji Liu	:	DECISION ON PETITION
Application No. 09/924,883	:	
Filed: 8 August, 2001	:	
Atty Docket No. 112.P14006	:	

This is a decision on the petition under 37 CFR 1.59(b), filed on 27 July, 2006, requesting that the docket report submitted with the petition to withdraw the holding of abandonment be expunged.

The petition is **GRANTED-IN-PART**.

On 11 July, 2006, a petition under 37 CFR 1.181 to withdraw the holding of abandonment was filed. Petitioner asserted therein that the Notice of Allowance and Fee(s) Due mailed on 4 October, 2005, was never received. In support, a docket report showing non-receipt of the Office action was submitted. Petitioner additionally provided evidence that a Revocation and Power of Attorney and Change of Correspondence Address was filed on 26 July, 2005.

A review of the record revealed that the Revocation and Power of Attorney and Change of Correspondence Address filed on 26 July, 2006, was not entered until 13 June, 2006. Consequently, the Notice mailed on 4 October, 2005, was mailed to the wrong address due to an Office error. A decision granting the petition was mailed on 7 September, 2006.

37 C.F.R. §1.59 sets forth:

§ 1.59 Expungement of information or copy of papers in application file.
(a)
(1) Information in an application will not be expunged, except as provided in paragraph (b) of this section.
(2) Information forming part of the original disclosure (i.e., written specification including the claims, drawings, and any preliminary amendment

specifically incorporated into an executed oath or declaration under §§ 1.63 and 1.175) will not be expunged from the application file.
(b) An applicant may request that the Office expunge information, other than what is excluded by paragraph (a)(2) of this section, by filing a petition under this paragraph. Any petition to expunge information from an application must include the fee set forth in § 1.17(h) and establish to the satisfaction of the Director that the expungement of the information is appropriate in which case a notice granting the petition for expungement will be provided.
(c) Upon request by an applicant and payment of the fee specified in § 1.19(b), the Office will furnish copies of an application, unless the application has been disposed of (see §§ 1.53(e), (f) and (g)). The Office cannot provide or certify copies of an application that has been disposed of.

[48 FR 2710, Jan. 20, 1983, effective Feb. 27, 1983; 49 FR 554, Jan. 4, 1984, effective Apr. 1, 1984; 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; 50 FR 23123, May 31, 1985, effective Feb. 11, 1985; revised, 60 FR 20195, Apr. 25, 1995, effective June 8, 1995; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (b) revised, 65 FR 54604, Sept. 8, 2000, effective Nov. 7, 2000; para. (b) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; revised, 68 FR 38611, June 30, 2003, effective July 30, 2003]

The matter Petitioner wishes to have expunged does not form part of the original disclosure. Petitioner has included the fee associated with the filing of petition under 37 C.F.R. §1.59 and has established to the satisfaction of the Director that the expungement of this information is appropriate.

Moreover, as the Decision on Petition mailed on 7 September, 2006, established that the Notice mailed on 4 October, 2005, was not received because it was mailed to the wrong address as a result of Office error, the copy of the docket record was not required as a basis for granting the petition.

As such, the electronic documents which contain these pages have been closed in the Office's Image File Wrapper software viewing program. The paper documents will not be removed from the physical file however, as the Office does not remove papers from paper files which have been scanned.

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 Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

Charles A. Pearson
Director, 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

GARDNER GROFF & MEHRMAN, P.C.
PAPER MILL VILLAGE, BUILDING 23
600 VILLAGE TRACE
SUITE 300
MARIETTA, GA 30067

Paper No. 8
MAIL

JUL 1 8 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:)
Newton Howard)
Application No.: 09/924,885)
Filed: August 8, 2001)
For: WIRELESS NETWORK

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request For Withdrawal As Attorney Or Agent filed June 14, 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**.

The following attorney(s) are withdrawn from the record: Arthur A. Gardner, Bradley K. Groff, Michael J. Mehrman, John W. Greenwald, Dawn V. Stephens and Matthew D. Josephic. It is noted that there are no attorneys remaining in the application.

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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Dr. Newton Howard
7872 Seafarer Way
Lorton, VA 22079

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

John W. Greenwald
GARDNER GROFF & MEHRMAN, P.C.
Paper Mill Village, Building 23
600 Village Trace, Suite 300
Marietta, GA 30067

MAIL

SEP 2 3 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Newton, Howard :
Application No. 09/924,885 :
Filed: August 8, 2001 :
For: WIRELESS NETWORK :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on July 30, 2002.

The Request to Withdraw as Attorney is **DISMISSED AS MOOT**.

Attorneys requesting withdraw were previously withdrawn in the petition filed June 14, 2002.

Further communications will be directed to the address listed below until such a time as applicant properly notifies the Patent and Trademark Office of a change of address. This address has been provided by the petition filed June 14, 2002.

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: DR. NEWTON HOWARD
7872 SEAFARER WAY
LORTON VA 22079

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Chadwick A. Jackson
Swidler Berlin, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007

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OFFICE OF PETITIONS

In re Application of	:	
HOWARD	:	DECISION ON PETITION
Application No.: 09/924,885	:	
Filed: August 08, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No.: 5H01.1-021	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 14, 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 non-final Office action mailed March 17, 2004, which set a shortened statutory period for reply of three (3) months. Accordingly, by operation of law, and as indicated in the Office communication mailed May 17, 2005, the above-identified application became abandoned on June 18, 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 a request for reconsideration and remarks; (2) the petition fee and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 17, 2004 is accepted as having been unintentionally delayed. Applicant is advised that the payment of a three-month extension of time fee is unnecessary and will be refunded to Deposit Account No.: 19-5127.

The application is being referred to Technology Center AU 2683.

Telephone inquires concerning this decision should be directed to Derek A. Putonen at (571) 272-3294 or in his absence, the undersigned at (571) 272-3217

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. 18

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

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DEC 2 3 2003

OFFICE OF PETITIONS

In re Application of
Edwards, Stuart D.
Application No. 09/924,935
Filed: August 8, 2001
Attorney Docket No. 9222.16785-CON

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 28, 2003, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the final Office action mailed April 18, 2003. A three month extension of time was obtained on October 24, 2003 (Certificate of Mailing Date of October 15, 2003). Accordingly, this application became abandoned on October 19, 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 Technology Center 3700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

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

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MAR 2 5 2005

OFFICE OF PETITIONS

In re Application of	:
Edwards, Stuart D.	:
Application No. 09/924,935	: DECISION GRANTING PETITION
Filed: August 8, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 9222.16785-CON	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 25, 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 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 August 8, 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 Paralegal Liana Chase at (571) 272-3282.

This matter is being referred to Technology Center Art Unit 3739 for appropriate action on the amendment filed February 25, 2005, 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.

Frances Hicks

Frances Hicks
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
P.O. Box 1450
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Jackson & Co., LLP
6114 4 La Salle Avenue
Suite 507
Oakland, CA 94611-2802

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SEP 1 2 2006

OFFICE OF PETITIONS

In re Application of	:	
Una Quinlan	:	
Application No. 09/924,955	:	DECISION ON PETITION
Filed: August 8, 2001	:	TO WITHDRAW
Attorney Docket No. 2764 US	:	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 19, 2006.

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

A review of the file record indicates that the power of attorney to Seong-Kung Oh and the attorneys and/or agents of the firm Jackson & Co have been revoked by the assignee of the patent application on June 7, 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 Terri Williams at 571-272-2991.

David Bucci
Petitions Examiner
Office of Petitions

cc: **3Com Corporation**
350 Campus Drive
Marlborough, MA 01752

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 9

Tope-McKay & Associates
23852 Pacific Coast Highway #311
Malibu CA 90265

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FEB 04 2003

OFFICE OF PETITIONS

In re Application of
Minden and Starodubov
Application No. 09/924,957
Filed: August 7, 2001
Attorney Docket No. HRL035

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b), filed January 28, 2002, to revive the above-identified application. This is also a decision on the petition under 37 CFR 1.47(a) filed February 5, 2002.

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

The petition under 37 CFR 1.47(a) is **moot**.

TREATMENT UNDER 37 CFR 1.137(b)

This application became abandoned for failure to respond in an appropriate and timely manner to the "Notice to File Missing Parts in a Nonprovisional Application" (the "Notice") mailed October 3, 2001. The Notice set forth a two month period for reply beginning from its mailing date. Extensions of time for reply were available pursuant to 37 CFR § 1.136(a). In response to the Notice on February 5, 2002, applicant filed a petition under 37 CFR 1.47(a), a request for an extension of time within the second month pursuant to 37 CFR 1.136(a), and remitted the outstanding filing fee. A Letter and Notice of Abandonment was mailed on December 16, 2002, informing petitioner that the application was abandoned and that revival would be necessary before the petition under 37 CFR 1.47(a) could be entertained. The instant petition was then filed on January 28, 2002.

The declaration, executed by both named inventors, filed January 28, 2002, is noted and made of record.

TREATMENT UNDER 37 CFR 1.47(a)

There is no remedy that could be provided by the petition under 37 CFR 1.47(a) because a declaration was filed that is executed by all named inventors,. The petition under 37 CFR 1.47(a) is, therefore, moot.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DIW 02-02

Paper No. 4

MICK A. NYLANDER
12416 N. HOLLY ROAD
HOLLY, MI 48442

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MAR 1 8 2002

OFFICE OF PETITIONS

In re Application of	:	
Georg A. Vihos	:	
Application No. 09/924,967	:	DECISION GRANTING PETITION
Filed: 8 August, 2001	:	
Atty's Docket No. VIHOS 0102	:	
PUS	:	

This is a decision on the petition titled "Petition to Accept Drawings Page" filed by facsimile on 7 December, 2001 (certificate of mailing date 24 October, 2001), requesting that the above-identified application, including one (1) sheet of drawings containing Figures 4 & 5, be accorded a filing date of 8 August, 2001.

On 8 August, 2001, the application was filed.

On 14 September, 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 8 August, 2001, but that Figures 4 & 5 described in the specification appeared to have been omitted.

In response, on 7 December, 2001, one (1) sheet of drawings containing Figures 4 & 5, the present petition, and a petition fee were filed. Petitioner argues that one (1) sheet of drawings containing Figures 4 & 5 was filed with the other application papers on 8 August, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioner's postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 8 August, 2001, and the above-identified application number, and acknowledges receipt, *inter alia*, of Drawings(3 pages). Petitioners request that the application, including the one (1) sheet of drawings containing Figures 4 & 5, be accorded a filing date of 8 August, 2001.

A review of the record reveals that two (2) sheets of drawings, containing Figures 1-3 are located among the application papers deposited on 8 August, 2001. However, the evidence is convincing that the application papers deposited on 8 August, 2001, included one (1) sheet of drawing containing Figures 4 & 5 as described in the specification, which was subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawing containing Figures 4 & 5 as described in the specification, is entitled to a filing date of 8 August, 2001.

The "Notice" mailed on 14 September, 2001, is vacated.

In view of the above, the petition is granted. The petition fee will be refunded to counsel's deposit account, No. 50-1444.

The application will be processed and examined using the one (1) sheet of drawing containing Figures 4 & 5 supplied on 7 December, 2001.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 8 August, 2001, using the application papers filed on 8 August, 2001, and the one (1) sheet of drawing containing Figures 4 & 5 supplied on 7 December, 2001.

Telephone inquires should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FRANKLIN B. LEVIN, ESQ.
SENIOR VICE PRESIDENT & GENERAL COUNSEL
PAY RENT, BUILT CREDIT, INC.
100 CANAL POINTE BLVD.,SUITE 208
PRINCETON NJ 08540

MAILED

APR 14 2010

OFFICE OF PETITIONS

In re Application of	:	
Nathans et al.	:	DECISION ON PETITION
Application No. 09/924,971	:	TO WITHDRAW
Filed: August 9, 2001	:	FROM RECORD
Attorney Docket No. 9520-002-64	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed November 2, 2009.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.

The request was signed by James M. Heintz on behalf of all attorneys of record associated with Customer Number 24510. However, since the practitioners were not appointed by a Customer Number upon filing of the instant application, petitioner may not withdraw the practitioners by Customer Number.

Further, although the petition is signed by the attorney of record it does not set forth a USPTO registration number. Petitioner should note that all documents submitted before the United States Patent and Trademark Office by a registered patent attorney must contain his/her registration number. Therefore, the petition is not accepted as being properly signed.

Currently, there is no outstanding Office action that requires a reply.

Additionally, the address given on the petition differs from the new 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 inquires concerning this decision should be directed to the undersigned at (571) 272-7751. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Joan Olszewski

Joan Olszewski
Petitions Examiner
Office of Petitions

cc: James M. Heintz
P.O. Box 2758
Reston VA 20190

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Kirkpatrick & Lockhart
607 14th Street, N.W.,
Suite 900
Washington, DC 20005

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FEB 13 2006

OFFICE OF PETITIONS

In re Verbinski et al. Application No. 09/925,009 Filing Date: Aug.9, 2001 Attorney Docket: SAAIC0055-C-CIPI	: : : : :	RECONSIDERATION OF PATENT TERM ADJUSTMENT

This decision is in response to applicant's "PETITION UNDER 37 CFR 1.705 FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" timely[1] filed on September 12, 2005 requesting that the PTA determination at the time of the notice of allowance be adjusted from zero (0) days to a determination of 160 days.

Applicants request for PTA reconsideration is **GRANTED.** The Office will adjust the PAIR calculation to reflect this decision.

Applicants assert that the determination of Zero (0) days of applicants delay is not accurate. Applicants assert that the determination is inaccurate because the Office did not provide applicants with USPTO delays under 37 CFR 1.702(a)(1). Specifically, applicants assert that the application filed on August 9, 2001 was not acted upon until April 3, 2003,a one hundred and seventy-four day delay. Accordingly, applicants assert that proper amount of PTA at the time of the issuance of the patent is one hundred and sixty days (174 + 73 - 87).

Applicants' arguments are persuasive. The Office did not act upon the application until April 3, 2003 which is one hundred and seventy-four days more than 14 months. Accordingly, the Office erred by not providing any PTA to applicants as required by 37 CFR 1.702(a)(1).

---

[1]Issue fee was paid on November 10, 2005.

After the mailing of this decision, the application will be forwarded to the Office of Patent Publications for a prompt issuance of the patent.

Any delays by the Office in failing to issue the application within four months of the payment of the issue fee and other requirements being satisfied will be added to the determination at the time of the issuance of the patent and will be reflected in the issue notification letter.

The Office has assessed the $200.00 fee required under 37 CFR 1.18(e). No additional fees are required for making this decision.

Any questions concerning this decision should be directed to Kery Fries 571-272-7757.

Kery Fries

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

cc: Adjusted PAIR calculation

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ALEXANDRIA, VA 22313-1450
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Mailed: APR 9 2004

spg
Paper Number 16

In re application of
Itsuhei Ogata et al.
Serial No. 09/925,017
Filed: August 9, 2001
For: REDUCTION RESISTANT THERMISTOR, METHOD OF PRODUCTION THEREOF, AND TEMPERATURE SENSOR

DECISION ON PETITION

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION PURSUANT TO M.P.E.P. § 711.03, filed November 24, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of November 12, 2003, 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 the Notice of Allowance mailed July 2, 2003 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 applicants or applicant's representative did not receive the Notice of Allowance, mailed July 2, 2003. The evidence provided includes a statement by the petitioner that the Notice of Allowance, mailed July 2, 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 Notice of Allowance was not received. Also provided is a copy of the attorney's application docket records where the Notice of Allowance would have been posted had it been timely received.

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 restarting of the statutory period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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James E. Beyer
DINSMORE & SHOHL LLP.
One Dayton Centre, One South Main Street
Suite 1300
Dayton, OH 45402-2023

NOV 1 8 2005

In re Application of:
Evan Y. W. Zhang
Serial No.: 09/925,059
Filed: August 08, 2001
Attorney Docket No.: **81948-1070**

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed January 12, 2005 and June 07, 2005.

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 James E. Beyer, on behalf of himself and all the attorneys/agents of record. There is at least thirty (30) days remaining 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.

The request is **APPROVED**.

There are no attorneys of record at this time.

All future communications from the Office will be directed to the inventor, Evan Y. W. Zhang, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. LaBalle at (571) 272-1594.

Clayton E. LaBalle, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Evan Y. W. Zhang
Zybron Inc.
3915 Germany Lane
Beavercreek, OK 45431

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In re Patent No. 6688030
Issue Date: February 10,2004
Application No. 09925064
Filed: August 8,2001
Attorney Docket No. VIHOS0101PUS

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

This is a decision on the electronic petition, filed March 6,2008 ,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 6,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

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)
6688030	2004-02-10	09/925,064	2001-08-08	VIHOS0101PUS (15027-002)

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	/Christopher A. Eusebi/	Date (YYYY-MM-DD)	2008-03-06
Name	Christopher A. Eusebi	Registration Number	44672

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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WILMER CUTLER PICKERING HALE AND DORR LLP
60 STATE STREET
BOSTON MA 02109

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JUL 0 6 2005

OFFICE OF PETITIONS

Applicant: Wang
Appl. No.: 09/925,065
Filing Date: August 8, 2001
Title: IDENTIFICATION AND MAPPING OF SINGLE NUCLEOTIDE POLYMORPHISMS IN THE HUMAN GENOME
Attorney Docket No.: 108827-135
Pub. No.: US 2004/0181048 A1
Pub. Date: September 16, 2004

This is a decision on the request for corrected of patent application publication under 37 CFR 1.221(b), filed on October 1, 2004, for the above-identified application.

The request is granted.

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

AUG 30 2005

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NANCY CHIU, WILKER
WILMER CUTLER PICKERING HALE AND DORR LLP
60, STATE STREET
BOSTON, MA 02109

In re Application of David G. Wang.	:
Serial No. : 09/925,065	:PETITION DECISION
Filed : 08-08-2001	:
Attorney Ref No. :108827.135	:

This letter is in response to the Petition under 37 C.F.R. 1.144, filed on June 20, 2005, to request the review and withdraw of the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that this application was filed on August 8, 2001 claiming the benefit of several provisional applications.

On July 1, 2004, Examiner mailed a restriction requirement designating inventions corresponding to Groups 1-960028 comprising Claim 1, drawn to SNP probes, classified in class 536, subclass 24.32. Examiner argued that each individual group relates to one of SEQ ID NO starting from SEQ ID NO: 375636-1335663 as recited in claim 1. Examiner noted that the inventions are unrelated because the different inventions are drawn to unique nucleic acid molecules which are distinct in structure and function. Examiner argued that each sequence is patentably distinct because they are unrelated sequences, i.e. the protein encoded by these sequences differ in structure and in function and in biological activity. Examiner also stated that even where the nucleic acid changes have no effect on protein structure or function, these sequences themselves represent allelic variations which have different diagnostic and therapeutic' implications and that the search and examination of each individual single nucleotide polymorphism probe is separate requiring separate nucleic acid sequence searches and separate searches in the patent and non-patent prior art which would pose an enormous burden on PTO and examiner search resources.

On October 4, 2004, in response to the Restriction Requirement, applicant elected, with traverse, the sequence of SEQ ID NO: 375,636 (which was amended herein to be SEQ ID NO: 1). Applicant respectfully averred that because all of the sequences have been provided in

electronic format to the Patent Office, a search of all of these sequences is not unduly burdensome and requested that all of the sequences be examined together. In addition, applicant also indicated plans to file a request to convert this application to a Statutory Invention Registration (SIR) once the Sequence Listing is published. Applicant also noted that the request for an SIR will not be filed until after the Sequence Listing is published, to ensure that all of sequences are, in fact, published, and that the sequences are correct.

In response to the election, the examiner acknowledged the election of Group I, i.e., SEQ ID NO:1, found the traversal non-persuasive and made the restriction requirement FINAL, in the paper mailed February 18, 2005. A first office action on the merits was also mailed as a part of this same communication, in which claim 1 was rejected under 35 USC 102(b), as well as under 35 USC 103(a).

In response to the Office action of February 18, 2005, applicants filed the instant petition, along with a proper request for SIR on June 22, 2005.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.144, to request review of the restriction requirement and the request for SIR has been considered.

Applicants have filed a proper request for SIR. There are no outstanding rejections under 35 U.S.C. 112, 1st or 2nd paragraphs as required by SIR. Upon granting of SIR status, prosecution on the merits is otherwise terminated. Thus any decision as to the correctness of the restriction requirement would be moot in view of the termination of prosecution.

DECISION

For these reasons, the petition under 37 C.F.R. 1.144, to request to withdraw the restriction is **DISMISSED**.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded of processing as a SIR.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-273-8300.

Jasemine C. Chambers

Jasemine Chambers
Director, Technology Center 1600

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OFFICE OF PETITIONS

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

In re Application of:
Sweatt, *et al.*
Application No. 09/925,109
Filed: August 9, 2001
Attorney Docket No. 22407-05391

DECISION ON PETITION

I. BACKGROUND

This is a decision on the July 10, 2002 petition, which is being treated under 37 C.F.R. §1.10(c), requesting that the above-identified application be accorded a filing date of August 8, 2001, rather than the presently accorded filing date of August 9, 2001.

II. THE RULE

37 C.F.R. § 1.10 Filing of correspondence by "Express Mail."

(a)...

(b)...

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d)...

...

IV. ANALYSIS

Petitioner alleges that the application was deposited in Express Mail service on August 8, 2001. Petitioner states that a stamped copy of the Express Mail label is unavailable, but does not state why. In the alternative, Petitioner supplies a copy of a USPS.com tracking report. However, the pertinent data on this sheet is inexplicably redacted. Specifically, the Express Mail label number for this report has been "blacked out". The purpose of redacting that information is unknown. However, the redaction has rendered the tracking report useless, as there is no way of verifying which package this report tracks. It is also noted that even if the relevant information had not been redacted, the tracking report does not have any reference to the desired filing date, August 8, 2001.

V. CONCLUSION

In view of the above, *this petition is* ***dismissed***.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(c)".

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

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.

Scott M. Ledford
Senior Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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DW 04-03

Paper No. 12

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW CA 94041

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APR 23 2003

OFFICE OF PETITIONS

In re Application of	:
Sweatt et al.	: DECISION GRANTING
Application No. 09/925,109	: PETITION
Filed: 8 August, 2001	:
Attorney Docket No. 22407-05391	:

This is a decision on the petition styled under 37 CFR 1.53 which is treated as a petition under 37 CFR 1.10(c), filed on 5 November, 2002, requesting that the above-identified application be accorded a filing date of 8 August, 2001, rather than the presently accorded filing date of 9 August, 2001.

Petitioners allege that the application was deposited in Express Mail service on 8 August, 2001. Although petitioners have not provided a copy of the Express Mail label showing the "date-in", petitioners have provided a copy of the USPS.com Track & Confirm Internet database printout showing a mailing bearing Express Mail Label No. EL566298331US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file) was accepted by the USPS on (i.e. given a "date-in" of) 8 August, 2001.

In view of the above, the petition is granted.

The petition fee is unnecessary and will be credited to counsel's deposit account, No. 19-2555, as authorized on the Fee Transmittal Form.

The application is being forwarded to the Office of Initial Patent Examination for correction of the filing date to **8 August, 2001**.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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Paper No. 16

MAIL

JUN 1 0 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

In re Application of:
Millard E. SWEATT, III, et al.
Application No. 09/925,109
Filed: August 8, 2001
For: METHOD AND SYSTEM FOR REMOTE TELEVISION REPLAY CONTROL

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request For Withdrawal As Attorney Under 37 CFR § 1.36 and 0.40(c) filed May 8, 2003.

A Revocation And Substitution Of Power Of Attorney Under 37 CFR § 1.36 was filed on December 19, 2003. The Power Of Attorney revoked all prior Powers Of Attorney and appointed McDonnell, Boehnen, Hulbert & Berghoff as the attorney of record of the instant application. The Power of Attorney of December 19, 2003 was accepted. Accordingly, all communications from the U.S. Patent and Trademark Office to applicant are to be conducted by McDonnell, Boehnen, Hulbert & Berghoff.

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
Information Security
703-305-9750

cc: McDonnell Boehnen Hulbert & Berghoff LLP
300 South Wacker Drive
32nd Floor
Chicago, IL 60606

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JOSEPH P. KINCART
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK NJ 08933-7003

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NOV 25 2005

OFFICE OF PETITIONS

In re Application of :
PEGRAM et al. :
Application No. 09/925,111 :
Filed: August 9, 2001 :
Attorney Docket No. VTN0547 :

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 19, 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 November 9, 2004, which set a statutory period for reply of three (3) months. Accordingly, the application became abandoned on February 10, 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 and publication fees[1]; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the issue and publication fee payments are accepted as having been unintentionally delayed.

There is no indication that the petitioner has submitted Part B – Fee(s) Transmittal form PTOL-85. Accordingly, if petitioner desires to have the information normally found thereon printed on the patent, the attached blank Fee(s) Transmittal form should be completed and returned to Mail Stop Issue Fee, Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450, within **ONE MONTH** from the mail date of this decision.

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

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

Denise Pothier
Petitions Examiner
Office of Petitions

Enc: PART B – FEE(S) TRANSMITTAL (PTOL-85)

[1] There appears to be some confusion in the petition as to the proper reply. Petitioner submitted an amendment previously filed on October 21, 2004 and makes reference to a declaration and its fee ($130), when none was filed or required. The Notice of Allowability required payment of the issue and publication fee, and the Notice of Abandonment mailed March 14, 2005 indicates the application went abandoned for failure to pay the issue and publication fee. Based on the general authorization in the petition, these fees have been charged to petitioner's deposit account.

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Paper No. 11

MAIL

MAY 2 8 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Laura A. Majerus
FENWICK & WEST LLP
Two Palo Alto Square
Palo Alto, CA 94306

In re Application of:	)	
Millard E. Sweatt, III	)	
Application No. 09/925,120	)	**DECISION ON REQUEST FOR**
Filed: August 8, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: METHOD AND SYSTEM FOR REMOTE TELEVISION REPLAY CONTROL	)	

This is a decision on the Request To Withdraw from Representation filed May 8, 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 May 8, 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

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

cc: Bradley J. Hulbert
MCDONNELL, BOEHNEN, HULBERT & BERGHOFF
300 South Wasker Drive
Chicago, IL 60606-6709

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Paper No.

PARSONS HSUE & DE RUNTZ LLP
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO CA 94111

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SEP 16 2003

OFFICE OF PETITIONS

In re Application of	:	
Eliyahou Harari et al	:	
Application No. 09/925,134	:	DECISION GRANTING PETITION
Filed: August 8, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 11587 M-10237-1P US	:	

This is a decision on the petition, filed July 21, 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 two applications filed in an eighteen month publication country on May 8, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject applications in an eighteen month publication country. Subsequent applications were filed on May 14, 2002, January 13, 2003, January 17, 2003 and January 18, 2003.

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 two applications 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 25, 2003 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 2826 for examination in due course.

Frances Hicks for
Karen Creasy
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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TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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MAR 19 2007

OFFICE OF PETITIONS

In re Application of :
Stephenn Clark Purcell :
Application No. 09/925,161 : DECISION ON PETITION
Filed: August 8, 2001 :
Atty Docket No. 022193-061300US :

This is a decision on the petition under 37 CFR 1.137(b), filed September 11, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before September 7, 2006, as required by the Notice of Allowance and Fee(s) Due, mailed June 7, 2006. Accordingly, the date of abandonment of this application is September 8, 2006. A Notice of Abandonment was mailed on February 22, 2007, subsequent to the filing of the present petition to revive.

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 $700, (2) the petition fee of $750, and (3) a proper statement of unintentional delay. Accordingly, the issue fee is accepted as being unintentionally delayed.

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HICKMAN PALERMO TRUONG & BECKER LLP
2055 GATEWAY PLACE, SUITE 550
SAN JOSE, CA 95110

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FEB 1 3 2006

OFFICE OF PETITIONS

In re Application of	:
Michael J. Kirkwood et al	:
Application No. 09/925,163	: DECISION GRANTING PETITION
Filed: August 8, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 50325-0532 (2861)	:

This is a decision on the petition, filed February 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 November 28, 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 2178 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) (along with any balance due at the time of payment), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

SPE: T. McKenzie

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/8/07

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/925,188 Patent No.: 6858651

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: _____

Thomas S McKenzie — SPE

1625 — Art Unit

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CHIEF PATENT COUNSEL
SMITH & NEPHEW, INC.
1450 BROOKS ROAD
MEMPHIS TN 38116

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MAR 19 2008

In re Application of	:	
Alan A. Winder et al	:	
Application No. 09/925,193	:	DECISION GRANTING PETITION
Filed: August 9, 2001	:	UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 41482/253466	:	

This is a decision on the petition under 37 CFR 1.313(c)(2), filed March 18, 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 February 12, 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) 272-3208.

This application is being referred to Technology Center AU 3768 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

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

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Paper No. 4

MAIL

DEC 1 8 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Fernandez & Associates, LLP
PO Box D
Menlo Park CA 94026-6402

In re Application of :
Yue Ma et al. :
Application No. 09/925,195 :
Filed: August 9, 2001 :
For: METHOD AND SYSTEM FOR DYNAMIC ANGLE INTERPOLATION IN IMAGE PROCESSING :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on October 1, 2002 and December 16, 2002.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All attorneys in the application are removed from record.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Graciela Cowger
Marger Johnson McCollom & Stolowitz, Inc.
1030 SW Morrison Street
Portland, OR 97205

UNITED STATES PATENT AND TRADEMARK OFFICE

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IP LEGAL DEPARTMENT
TYCO FIRE & SECURITY SERVICES
ONE TOWN CENTER ROAD
BOCA RATON FL 33486

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AUG 2 5 2005

OFFICE OF PETITIONS

In re Application of
Broemmelsiek et al.
Application No. 09/925,222
Filed: August 8, 2001
Attorney Docket No. C4-1017

DECISION
ON PETITION

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 29, 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 March 30, 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 Non-Fee Amendment; (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 December 29, 2004 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 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 Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Technology Center Art Unit 2613 for further processing.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

cc: John F. Kacvinsky
4500 Brooktree Road
Wexford, PA 15090

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

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JAN 2 8 2002

OFFICE OF PETITIONS

RALPH C. FRANCIS
FRANCIS LAW GROUP
1808 SANTA CLARA AVE
ALAMEDA, CA 94501

In re Application of Jesser Application No. 09/925,228 Filed: August 8, 2001 Attorney Docket No. EMS-02-016U Title: RFID TAG ASSEMBLY AND SYSTEM:	DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 C.F.R. § 1.47(b) MOOT

This is in response to the renewed petition under 37 C.F.R. § 1.47(b) filed January 4, 2002.

In view of the joinder of the inventor, further consideration under 37 C.F.R. § 1.47(b) is not necessary and the petition is considered to be moot. This application does not have any Rule 1.47(b) status and no such status should appear on the file wrapper. This application need not be returned to this Office for further consideration under 37 C.F.R. § 1.47(b).

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

Telephone inquiries should 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 4

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NOV 1 5 2001

OFFICE OF PETITIONS

RALPH C. FRANCIS
FRANCIS LAW GROUP
1808 SANTA CLARA AVE
ALAMEDA, CA 94501

In re Application of :
Jesser :
Application No. 09/925,228 : DECISION REFUSING STATUS
Filed: August 8, 2001 : UNDER 37 CFR 1.47(b)
Attorney Docket No. EMS-02-016U :
Title: RFID TAG ASSEMBLY AND SYSTEM:

This is in response to the papers submitted with the instant application titled "STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING INVENTOR (37 CFR 1.47)." These papers are being construed as a petition under 37 CFR 1.47(b).

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(b)," 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).

The above-identified application was filed August 8, 2001 without an executed oath or declaration and naming Edward A. Jesser as the sole inventor.

On September 17, 2001, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing.

A grantable petition under 37 CFR 1.47(b) 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;(4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) a showing that such action is required to preserve the rights of the parties or to prevent irreparable damages.

Petitioner lacks items (1) and (2) set forth above.

As to item (1), the petition lacks supporting evidence that the nonsigning inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers,

refuses to sign the oath or declaration. *See*, MPEP § 409.03(d).

The statement of facts of Mark Nicholson indicates that the inventor was presented with a copy of the application papers and thereafter verbally refused to execute the declaration. The statement of facts does not, however, detail the manner in which the application papers were presented to the inventor. If the application papers were presented via mail, proof to this effect in the form of a copy of the cover letter accompanying the application papers is required. If the application papers were presented to the inventor in person, a declaration to this effect along with details of the presentation by the person who presented the application papers to the inventor is necessary.

Petitioner is required to establish that the inventor received a copy of the application papers (specification, claims, and drawings) prior to the verbal refusal alleged by Mark Nicholson in the statement of facts accompanying the application papers.

Petitioner is reminded that before refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

Details of the alleged refusal, time, place, etc., must accompany any request for reconsideration of this decision.

As to item (2), applicant is required to submit the $65.00 surcharge for late filing of an acceptable oath or declaration. The declaration accompanying the application papers is not acceptable because it has not been executed by the named inventor nor has applicant established entitlement to status under Rule 47. The declaration is also defective because it does not include a signature block for the person signing on behalf of the Rule 47 applicant. While the applicant signed on a separate document, this document is neither attached to nor referenced in the declaration.

Additionally, the declaration must be signed by an officer of the assignee corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor. The officer must identify his or her title in the declaration. If the declaration is not signed by an officer of the corporation, proof of authority to sign by the person signing on behalf of the corporation must be submitted. *See*, MPEP 409.03(d).

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 related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

for D Wood

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

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RALPH C FRANCIS
FRANCIS LAW GROUP
1942 EMBARCADERO
OAKLAND CA 94606

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MAY 2 6 2006

OFFICE OF PETITIONS

In re Application of	:	
Edward A. Jesser	:	
Application No. 09/925,228	:	DECISION ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. EMS-02-016U	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed April 25, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed October 3, 2005, which set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on January 4, 2006. The mailing of this decision precedes the mailing of a Notice of Abandonment.

Petitioner states that the Notice of Allowance was mailed to the incorrect address. Petitioner has submitted *prima facie* evidence in the form of a USPTO date stamped postcard receipt, showing that a Change of Correspondence Address was filed on November 22, 2004. However, the Change of Correspondence Address was not entered and the Notice of Allowance was mailed to the prior address of record.

In view thereof, **the holding of abandonment is withdrawn**.

Receipt of the issue and publication fees is acknowledged.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re application of:
Thomas D. Petite, et al.
Application No. 09/925,270
Filed: August 9, 2001
For: SYSTEMS AND METHODS FOR ENABLING A MOBILE USER TO NOTIFY AN AUTOMATED MONITORING SYSTEM OF AN EMERGENCY SITUATION

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on October 5, 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 satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All of the attorneys/agents of record have been withdrawn.

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 A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: Douglas D, Salyers, Esq.
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216

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600 PEACHTREE STREET, NE
ATLANTA, GA 30308

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Thomas D. Petite et al
Application No. 09/925,270
Filed: August 9, 2001
Attorney Docket No. 081607-1170

This is a decision on the petition under 37 CFR 1.137(b), filed December 16, 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 April 29, 2005, 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 30, 2005.

The instant 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 unintentionally delay have been received. Accordingly, the reply to the non-final Office action of April 29, 2005 is accepted as having been unintentionally delayed.

The Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address filed December 16, 2005 has been entered and made of record. A copy of the Notice of Acceptance of Power of Attorney is enclosed.

This matter is being referred to Technology Center AU 2661.

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

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions

Enclosure: Notice of Acceptance of Power of Attorney

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
09/925,270	08/09/2001	Thomas D. Petite	081607-1170

CONFIRMATION NO. 5549

OC000000018152458

6980
TROUTMAN SANDERS LLP
600 PEACHTREE STREET , NE
ATLANTA, GA 30308

Date Mailed: 02/28/2006

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 12/16/2005.

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.

Wan Laymon

WAN LAYMON
OP (571) 272-3220

ATTORNEY/APPLICANT COPY

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)
6601500	2003-08-05	09925271	2001-08-09	820326-1110

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	/jerry k. mccollum/	Date (YYYY-MM-DD)	
Name	Jerry K. McCollum		
Enter Reel and Frame Number		Remove	
Reel Number	012069	Frame Number	0073
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. 6601500
Issue Date: August 5,2003
Application No. 09925271
Filed: August 9,2001
Attorney Docket No. 4C05.1-170

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

This is a decision on the electronic petition, filed September 6,2007 ,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 September 6,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 23 2005

OFFICE OF PETITIONS

LIPSITZ & MCALLISTER
755 MAIN STREET
MONROE CT 06468

In re Application of :
Robert Hornung et al :
Application No. 09/925,293 :
Filed: August 9, 2001 :
Attorney Docket No. IND-109.1 :

ON PETITION

This is a decision on the petition, filed May 13, 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 September 3, 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) 272-3208.

The examiner of Technology Center AU 1733 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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KAREN A. LOWNEY, ESQ.
ESTEE LAUDER COMPANIES
125 PINELAWN ROAD
MELVILLE, NJ 11747

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JUL 30 2004

OFFICE OF PETITIONS

In re Application of	:	
Mammone et al.	:	
Application No. 09/925,333	:	ON PETITION
Filed: August 9, 2001	:	
Attorney Docket No. 01.38US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 6, 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 June 11, 2003. A three-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on December 12, 2003.

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

After reviewing the USPTO financial records, it appears that the petitioner's deposit account was charged for the three-month extension of time fee twice. Accordingly, the $930.00 charged on January 23, 2004 will be credited back to the petitioner's deposit account as authorized.

This matter is now being forwarded to Technology Center 1600 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after approximately **September 24, 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

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OFFICE OF PETITIONS

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVENUE, SUITE 5400
SEATTLE WA 98104-7092

In re Application of	:	
Scheller et al.	:	
Application No. 09/925,343	:	
Filed: August 9, 2001	:	DECISION ON PETITION
Attorney Docket No. 853663.408	:	UNDER 37 C.F.R. § 1.137(B)
Title: PORTABLE ELECTRONIC	:	
APPARATUS HAVING A REINFORCED	:	
HOUSING	:	

This is a decision on the petition filed June 5, 2009, pursuant to 37 C.F.R. § 1.137(b), to revive the above-identified application.

The petition pursuant to 37 C.F.R. § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R § 1.113 in a timely manner to the final Office action mailed March 18, 2008, which set a shortened statutory period for reply of three months. An after-final amendment was received on April 28, 2008, and an advisory action was mailed on April 7, 2009. No extensions of time under the provisions of 37 C.F.R §1.136(a) were available, and no further responses were received. Accordingly, the above-identified application became abandoned on June 19, 2008.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in 37 C.F.R. § 1.20(d)) required pursuant to paragraph (d) of this section.

With this petition, Petitioner filed the petition fee and the proper statement of unintentional delay. Petitioner further submitted 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).

As such, the first three requirements of Rule 1.137(b) have been met. The fourth requirement of Rule 1.137(b) is not applicable, as a terminal disclaimer is not required.[1]

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment that was submitted on June 5, 2009 - can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the revival has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - **the Office of Petitions cannot effectuate a change of status.**

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.[2] All other inquiries

---

1 See Rule 1.137(d).
2 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

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

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NXP INTELLECTUAL PROPERTY DEPARTMENT
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE, CA 95131

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JAN 05 2009

OFFICE OF PETITIONS

In re Application of :
Nicholas D.L. Thorne et al :
Application No. 09/925,357 :
Filed: August 9, 2001 :
Attorney Docket No. GB 000104 :

ON PETITION

This is a decision on the petition filed January 2, 2009, which is being treated as a petition under 37 CFR 1.313(a), to withdraw the above-identified application from issue.

The petition is **DISMISSED**.

Petitioner requests that the present application be withdrawn from issue in order that a new Office Action be generated which specifies precisely which elements are missing from the drawings.

37 CFR 1.313(a) states, in part:

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

As such, a grantable petition requesting withdrawal of an application from issue must be accompanied by: (1) a showing of good and sufficient reasons why withdrawal of the application from issue is necessary; and (2) the requisite petition fee under 37 CFR 1.17(h).

However, a review of the record discloses that application became abandoned for failure to timely pay the issue and publication fees on or before January 1, 2009, as required by the Notice of Allowance and Fee(s) Due, mailed October 1, 2009. The statute is clear that a failure to timely pay the issue fee within three months of the mailing date of the Notice of Allowance and Issue Fee Due will result in abandonment of the application. Accordingly, this application became abandoned by operation of law on January 2, 2009.

Applicant is advised that the abandonment of this application may only be overcome by filing a petition to revive under 37 CFR 1.137. A petition to revive is appropriate if applicant's failure to reply was either unavoidable or unintentional

For the above reason(s), this application will not be withdrawn from issue under the provisions of 37 CFR 1.313(a).

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

/Irvin Dingle/
Petitions Examiner
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE CA 95131

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SEP 18 2009

OFFICE OF PETITIONS

In re Application of	:	
Nicholas D.L. THORNE et al.	:	
Application No. 09/925,357	:	DECISION ON PETITION
Filed: August 09, 2001	:	
Attorney Docket No. **GB 000104**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 31, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees and to submit corrected formal drawings on or before January 02, 2009, as required by the Notice of Allowance and Fee(s) Due and the Notice of Allowability, mailed October 01, 2008. Accordingly, the date of abandonment of this application is January 03, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of payment of the issue fee of $1510, the publication fee of $300, and corrected formal drawings , (2) the petition fee of $1620; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Allowance is accepted as having been unintentionally delayed.

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

date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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 Tredelle Jackson at (571) 272-2783.

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

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

cc: **TERRY W. KRAMER**
1725 DUKE STREET
SUITE 240
ALEXANDRIA VA 22314

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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TERESA STANEK REA
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. BOX 1404
ALEXANDRIA, VA 22313-1404

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OFFICE OF PETITIONS

In re Application of	:	
Morsi, Hesham	:	
Application No. 09/925,433	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 032513-007	:	

This is a decision on the petition under 37 C.F.R. § 1.182, filed December 7, 2004, to change the name of an inventor.

The petition is **GRANTED.**

The name will be changed from Hesham M. Abdel-Gawwad to Hesham Morsi.

On November 22, 2004, the petition fees were increased. The petition fee for a petition under 37 C.F.R. § 1.182 was increased from $130.00 to $400.00. Accordingly, an additional $270.00 was charged to petitioner's deposit account as authorized.

This matter is now being referred to the Publishing Division to await a response to the Notice of Allowance mailed on October 4, 2004.

Telephone inquiries regarding this decision should be directed to Paralegal Liana Chase at (571) 272-3282.

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

Enclosure: Corrected Filing Receipt

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

MAIL

APR 0 8 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re application of:
Thomas D. Petite, et al.
Application No. 09/925,445
Filed: August 9, 2001
For: SYSTEMS AND METHODS FOR ENABLING A MOBILE USER TO NOTIFY AN AUTOMATED MONITORING SYSTEM

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the request for withdrawal as attorney/agent and change of correspondence address filed on October 5, 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 satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All of the attorneys/agents of record have been withdrawn.

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 A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

cc: Douglas D. Salyers, Esq.
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, Georgia 30308-2216

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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DEC 22 2004

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

MAILED

DEC 22 2004

OFFICE OF THE DIRECTOR
TC 3600

In re application of
Luca Chiarabini et al.
Application No. 09/925,519
Filed: August 10, 2001
For: METHOD AND APPARATUS FOR AUTOMATED ON-LINE PRINTING SERVICE

: DECISION ON REQUEST
: FOR WITHDRAWAL OF
: ATTORNEY

This is a decision on the request filed on March 26, 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 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 attorney in the above-identified application is not approved as moot because the attorney making the request; John W. Ryan., does not now have, and apparently never has had, power of attorney in this application. Reason not acceptable under 37 CFR 10.40.

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

KJD/slb: 12/01/04

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4-18-05

TO SPE OF : ART UNIT 2831

SUBJECT : Request for Certificate of Correction on Patent No.: 6,803,517

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

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

Magdalene Talley

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:

Approved.

Dean A. Reichard

DEAN A. REICHARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. 6,803,517 B2

DATED: October 12, 2004

INVENTOR: Luigi CAIMI

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

Claim 1, column 15, lines 11-12, "a composition" should read --a polymeric composition--.

Claim 1, column 15, line 16, "strappability" should read --strippability--.

Claim 3, column 15, line 29, "heptadiens," should read --heptadiene,--.

Claim 8, column 15, line 41, "claim" should read --claims--.

Claim 10, column 16, line 11, "methyltrls" should read --methyltris--.

Claim 16, column 16, line 40, "an hydride." should read --anhydride.--.

Claim 18, column 16, line 43, "claim" should read --claims--.

MAILING ADDRESS OF SENDER

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
901 New York Avenue, NW
Washington, D.C. 20001-4413

Patent No. 6,803,517 B2

No. of additional copies
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FEB 17 2005

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,548	08/08/2001	Shoukat Dedhar	KINE001CIP4	5127

24353 7590 06/02/2005

BOZICEVIC, FIELD & FRANCIS LLP
1900 UNIVERSITY AVENUE
SUITE 200
EAST PALO ALTO, CA 94303

EXAMINER
CHEN, SHIN LIN

ART UNIT	PAPER NUMBER
1632	

DATE MAILED: 06/02/2005

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

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JUN -2 2005

BOZICEVIC, FIELD & FRANCIS LLP
1900 University Avenue, Suite 200
East Palo Alto, CA 94303

In re Application of
Arthur et al
Serial No. : 09/925,548
Filed : August 8, 2001
Attorney Ref No. : KINE-001CIP4

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.181, filed on February 16, 2004, to review the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the application was filed on August 8, 2001 with 7 claims and a sequence listing with 97 sequences

A requirement for restriction was mailed to applicants on 1/29/2003. In this paper the examiner required the restriction of the 7 claims into two different groups, Group I, drawn to an oligonucleotide and Group II, drawn to a method of inhibiting expression of integrin linked kinase using an oligonucleotide. The examiner further required that in addition to the above election to one of the two groups, applicants should additionally elect a single SEQ ID No for examination.

Applicants responded with an election of Group I and SEQ ID NO: 16, with traverse, on 3/4/2003. Following the election, on 5/9/2003, applicants submitted a new sequence listing with 99 sequences. The new sequence listing appeared to be identical to that previously submitted in the application with the exception that two additional sequences, a new SEQ ID NO: 1 and a new SEQ ID NO: 2, which correspond to the full length integrin-linked kinase gene and its encoded protein were added to the previously submitted 97 sequences.

In response to the election, the examiner acknowledged the election of Group I, claims 1-4 and SEQ ID NO: 16 and further considered the traversal and found applicants arguments non-persuasive and made the restriction requirement FINAL in the paper of 5/29/2003. The examiner further acknowledged the newly submitted sequence listing and stated that "Since the SEQ ID Nos: 13-109 have been amended to read as SEQ ID Nos 3-99, the elected SEQ ID No. 16 corresponds to SEQ ID No. 6 of the new sequence listing and thus claims 1-4 and SEQ ID

NO: 6 are under consideration." (Examiner inadvertently assumed that elected SEQ ID NO: 16 was equal to new SEQ ID NO: 6, applicants did not clarify that SEQ ID NO: 16 is equal to new SEQ ID NO: 18).

A first office action on the merits was also mailed as a part of this same communication, in which claims 1-4 were rejected under 35 USC 112 2nd paragraph and claims 1 and 2 were rejected under 35 USC 102(a) and (b).

On 8/16/2004, the examiner mailed a second non-final office action in which the only pending claims, claims 3 and 4, were objected to because they encompassed non-elected subject matter (i.e. SEQ ID Nos. 3-5 and 7-99). The examiner again stated that the elected subject matter is SEQ ID NO: 6 and further noted that an oligonucleotide comprising SEQ ID No. 6 is free of the prior art.

In response to the non-final rejection of 8/16/2004, applicants responded with the instant petition and accompanying arguments in which applicants acknowledge the examiner's previous statement that an oligonucleotide comprising SEQ ID NO:6 is free of the prior art and in condition for allowance.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.181, to request review of the restriction requirement has been considered.

Prior to the discussion of the issue of review of the restriction requirement, the record should be made clear. Applicants' election of the subject matter of Group I, claims 1-4 and SEQ ID NO: 16 has been and is acknowledged. At the time of election, this sequence is "ccacagcaga gcggccctc". Following the amendment of the sequence listing made on 5/9/2003, SEQ ID NO: 16, "ccacagcaga gcggccctc", now corresponds to SEQ ID NO: 18, **not** SEQ ID NO: 6. Thus the original election of Group I and SEQ ID NO: 16 now corresponds to Group I and SEQ ID NO: 18.

Applicants' petition under 37 C.F.R. 1.181 to review the restriction requirement and request rejoinder of the oligonucleotide sequences set forth in claims 3 and 4.

Applicants submit that all of the presently claimed oligonucleotide sequences are short, defined fragments of the larger sequence, SEQ ID NO: 1 and that SEQ ID NO: 1 is a cDNA derived from an mRNA transcript of the integrin linked kinase (ILK). Based on this applicants submit that the oligonucleotide sequences are therefore all related, and that the sequences set forth in claims 3 and 4 share a common function and are related as being fragments of a single entity that encodes a single polypeptide.

The claims as amended 6/10/2004 read as follows:

3. An oligonucleotide comprising at least 18 nucleotide and having a sequence selected from the group consisting of SEQ ID NO: 3 to SEQ ID NO: 99.
4. The oligonucleotide according to claim 3, and a pharmaceutically acceptable carrier.

Applicants' complete argument is acknowledged, however, found non-persuasive.

The previous restriction required that by statute, under 35 U.S.C. 121, applicants elect a single disclosed SEQ ID No, even though this requirement is traversed. Oligonucleotides comprising these "sequences", while not indicated at the time, are patentably distinct, each from the other, because of their materially different nucleic acid sequences. It is noted that SEQ ID NOs: 3-99 are non-overlapping 18 and 19 nucleotide long antisense fragments of SEQ ID NO: 1, a 1789 bp cDNA that encodes the integrin linked kinase. There is not generic linking claim which encompasses the oligonucleotides.

Claim 3 recites an oligonucleotide comprising the various nucleic acid sequences listed in the alternative. Claim 3 could be re-written as a series of dependent claims that capture the full scope of claim 3, without loss or overlap of scope of the claimed invention.

Claims which recite products listed in the alternative may be eligible for election of species practice. MPEP 803.02 states:

> 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.

Applicants are correct that if the inventions which are claimed in the alternative qualified for Markush practice they would be examined according to 803.02. But this is not required for the following reasons. Applicants assert that the 97 sequences recited in claims 3 and 4 share a common utility. However this argument is not commensurate in scope with claims which fail to require any common function. Further, the 97 oligonucleotides do not appear to share any substantial structural feature one with another, let alone any substantial feature disclosed as being essential to that utility. An alignment of elected SEQ ID NO: 18 (ccacagcaga gcggccctc) with SEQ ID NOs 3-17 and 19-99 (For example randomly selected SEQ ID NO: 3, ccttctccgg ggaactccc, SEQ ID NO: 7, gcctgaggac tgtggagtg) shows no apparent shared structure between the individual sequences or between groups of the individual sequences. While the molecules may hybridize to the common structure of the gene of SEQ ID NO: 1, it is noted that SEQ ID NO: 1 is 1789 nucleotides long, whereas the oligonucleotides are 18-19 -mers. Fragments

derived from a full length molecule do not per se share a common structure with the full length molecule or with one another. Further the oligonucleotides do not share any common structure essential for common utility with the full length gene, nor with each other. SEQ ID NO: 1 encodes an integrin linked kinase protein, a utility that the short oligonucleotides 3-99 are not required to possess.

It is thus proper for the Office to set forth a restriction requirement to a single invention. Because the oligonucleotides lack "unity of invention", per 803.02, election of species practice is not required.

The inventions are distinct, each from the other because of the following reasons:

The inventions corresponding to SEQ ID NOs: 3-99 are related as each are non-overlapping 18 and 19 nucleotide long antisense fragments of SEQ ID NO: 1.

Applicants' attention is directed to MPEP 803 which states:

> There are two criteria for a proper requirement for restriction between patentably distinct inventions:
>
> (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and
>
> (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02).

The inventions as claimed (SEQ ID NOs: 3-99) are distinct. The inventions do not require the related feature of hybridizing to SEQ ID NO: 1 and other sequences could be antisense fragments of SEQ ID NO: 1.

The oligonucleotides comprising SEQ ID NOs: 3-99 are not required by the claims to have a shared common utility. Further the oligonucleotides are not claimed in terms of a linking claim which encompasses the inventions by a generic concept.

A proper search and examination of more then one of the identified oligonucleotides (i.e. SEQ ID NOs: 3-99) would result in a serious burden on the examiner by virtue that each of the different SEQ ID NOs: 3-99 denote structurally different nucleic acid sequences comprising different functions. As such a search of the different inventions involves different searches of various nucleic acid databases as well as completely different text searches, depending on the elected invention.

Because these inventions are distinct for the reasons given above and the search required for each of the different nucleic acid sequences corresponding to SEQ ID NOs: 3-99 are different, restriction for examination purposes as indicated is proper.

Applicants argue that the examination of more than one sequence would not be an undue burden on the examiner on the basis that "...to aid the biotechnology industry in protecting its

intellectual property without creating an undue burden on the Office, the Commissioner has decided *sua sponte* to partially waive the requirements of 37 CFR 1.141 *et. seq* and permit a reasonable number of sequences to be claimed in a single application...normally ten sequences..."

Applicants reference to the U.S. Patent and Trademark Office policy regarding the examination of patent applications that claim large numbers of nucleotide sequences in the Official Gazette, 1192 O.G. 68 (November 19, 1996) is acknowledged, however, not found persuasive on the basis that this policy regarding the partial waiving of the requirements of 37 CFR 1.141 is such that it will permit a reasonable number of nucleotide sequences to be claimed in a single application. Under the policy, up to 10 independent and distinct nucleotide sequences will be examined in a single application without restriction. The waiver is permissive and not a requirement. The present restriction requirement conforms with this policy as it has required that the application be restricted to a single sequence. Applicants are reminded that one is within the range of up to ten.

Further, applicants' request that, should the above discussed rejoinder of all 97 SEQ ID NOs; not be granted, ten of the oligonucleotide sequences be rejoined in the present claims is incomplete, as applicants have not provided a list of 10 sequences to be searched. Applicants must make their own election as per MPEP 818.03(e) and the Office can not determine which ten sequences should be rejoined if such were to occur.

Not withstanding the above discussion, as applicants elected SEQ ID NO: 16, now SEQ ID NO: 18 and during the course of examination a different invention, an oligonucleotide comprising SEQ ID NO: 6 has been determined to be free of the prior art, it is determined that applicants should receive examination of the subject matter of oligonucleotides comprising SEQ ID NO: 18 and SEQ ID NO: 6.

Accordingly the restriction requirement between original oligonucleotide comprising SEQ ID NO: 16 (now SEQ ID NO: 18) and oligonucleotide comprising SEQ ID NO: 6 is hereby withdrawn.

DECISION

For these reasons, the petition under 37 C.F.R. 1.144 to request review of the restriction requirement and request rejoinder of the oligonucleotide sequences set forth in claims 3 and 4 is **GRANTED-IN-PART** as follows.

The request to have all 97 oligonucleotides examine together is **DENIED.**

The incomplete request to have 10 unspecific oligonucleotides examined together is **DISMISSED**.

In view of the prosecution history, rejoinder of the oligonucleotide comprising SEQ ID No 6 and SEQ ID No 18 (as numbered and described by the current sequence listing) is **GRANTED.**

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded to the examiner to take appropriate action as a result of this petition decision and to consider the amendments and arguments filed by applicants on 2/16/2005.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 703-872-9306.

Jasemine C. Chambers

Jasemine Chambers
Director, Technology Center 1600

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WASHINGTON, D.C. 20231
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DIW 10-02

Paper No. 6

ATTENTION: DAVID B. PATCHETT
OFFICE OF INTELLECTUAL PROPERTY COUNSEL
3M INNOVATIVE PROPERTIES COMPANY
P.O. BOX 33427
ST. PAUL MN 55133-3427

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OFFICE OF PETITIONS

In re Application of	:	
Michael G. Dykhoff	:	
Application No. 09/925,553	:	DECISION GRANTING PETITION
Filed: 9 August, 2001	:	
Attorney Docket No. 56950US002	:	

This is a decision on the petition under 37 CFR 1.10(d) filed on 17 September, 2002, requesting that the above-identified application be accorded a filing date of 9 August, 2001, rather than the presently accorded filing date of 8 August, 2001.

Petitioner alleges that the application was deposited in Express Mail service on 9 August, 2001. Petitioner states that the "date-in" on the Express Mail Customer Label is incorrect, but has provided a copy of a USPS Express Mail Corporate Account Mailing Statement showing that the Express Mail shipment with Label No. EL597085739US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file) was deposited on 9 August, 2001. Additionally, a review of the USPTO's USPS Express Mail Information Database shows that the package bearing above-identified Express Mail Number was accepted by the USPS on 9 August, 2001.

In view of the evidence present in the file, it is concluded that the correct date of deposit in Express Mail service is 9 August, 2001.

In view of the above, the application is entitled to a filing date of 9 August, 2001.

The petition is granted. No petition fee is due and none has been charged.

The application is being returned to Office of Initial Patent Examination for reprocessing with a filing date of 9 August, 2001, not 8 August, 2001.

Telephone inquiries may 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
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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 25 2003

#8

VIDAS, ARRETT & STEINKRAUS, P.A. :
SUITE 2000 :
6109 BLUE CIRCLE DRIVE : DECISION ON
MINNETONKA, MN 55343 : PETITON TO MAKE SPECIAL

This is in response to applicants' petition faxed March 4, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. 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 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

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

APR 1 2003

VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 2000
6109 BLUE CIRCLE DRIVE
MINNETONKA, MN 55343

In re Application	:	
David G. Jang	:	
Serial No. 09/925,562	:	CORRECTED DECISION ON
Subject: Intravascular Stent	:	PETITON TO MAKE SPECIAL

This is in response to applicants' petition faxed March 4, 2003, to make the above-identified application special under the provisions of 37 CFR 1.102(d), based on infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. 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 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

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MCGINN & GIBB, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA VA 22182-3817

In re Application of:
Shunichi HOSOYAMADA
Application Serial No.: 09/925,601
Filed: August 10, 2001
For: **METHOD AND CIRCUIT FOR DRIVING LIQUID CRYSTAL DISPLAY AND IMAGE DISPLAY DEVICE**

DECISION
ON PETITION

This is a decision on the petition under 37 C.F.R. §1.181 to reinstate appeal.

The Petition is treated as a request to reinstate the appeal in accordance with 37 CFR 193(b)(2)(ii).

The request to reinstate appeal is granted. The file will be forwarded to the examiner for consideration of the supplemental brief filed September 24, 2004 in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

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OFFICE OF PETITIONS

In re Application of:	:	
Travis J. Parry	:	
Application No. 09/925,650	:	DECISION ON
Filed: August 10, 2001	:	PETITION
Attorney Docket Number: 10012446-1	:	

This is a decision in response to the petition under 37 CFR 1.137(b), filed February 22, 2006, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action, mailed June 17, 2005. The Notice set a shortened statutory period for reply of three (3) months from the mail date of the Notice, and also provided for extensions of time under 37 CFR 1.136(a). Applicant filed a reply in the form of an Amendment on August 17, 2005; however, the Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed January 23, 2006.

No complete and proper reply having been received, the application became abandoned September 18, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

With the instant petition, Applicant has filed a Notice of Appeal.

The two-month period for filing an appeal brief (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

The application is being forwarded to Technology Center 2625 to await submission of the Appeal Brief.

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.**

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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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Paper No.

FRISHAUF, HOLTZ, GOODMAN &
CHICK, PC
220 5TH AVE FL 16
NEW YORK, NY 10001-7708

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NOV 25 2005

OFFICE OF PETITIONS

In re Application of	:	
Kaneko et al.	:	DECISION ON APPLICATION
Application No. 09/925,673	:	FOR
Filed: August 9, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. 01376CIP/HG	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE filed June 22, 2005. Applicants request that the initial determination of patent term adjustment be corrected from one hundred sixty-two (162) days to two hundred thirty-one (231) days.

The request is **GRANTED** to the extent indicated herein. The patent term adjustment at the time of the mailing of the notice of allowance has been corrected to two hundred sixty-four (264) days.

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 two hundred sixty-four **(264)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 5, 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 to date is 162 days.

First, applicants disclose that the entry of a period of adjustment of 7 days associated with the Office's mailing of a notice of allowance is incorrect. Applicants disclose that the Notice was mailed on August 11, 2004, and not August 20, 2004. This was within four months of the filing of applicants' RCE on April 13, 2004. Thus, there was no delay within the meaning of 1.702(a)(2).

This argument has been considered and found persuasive. For the reasons stated by applicants, the adjustment of 7 days is not warranted.

Secondly, applicants assert entitlement to a period of adjustment of 76 days for Office delay in responding to their RCE filed August 17, 2004. Applicants state that a Notice of Allowance was not mailed until March 3, 2005. Applicants state that a Notice of Allowance dated January 31, 2005, was mailed on March 3, 2005, according to the envelope postmark. In support thereof, applicants submit a copy of the envelope.

This argument has been considered and found persuasive to an extent. It is agreed that the Office's delay should not be determined based on the mailing of a Notice of Allowance on January 31, 2005. Under the circumstances of this case, the delay should be calculated based on the mailing of a proper Notice of Allowance on April 5, 2005 (not the improper mailing on March 3, 2005). Using the April 5, 2005 date, the period of adjustment pursuant to 1.702(a)(2) is 109 days.

In view thereof, the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is two hundred sixty-four (264) days.

Applicants' submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any adjustment accrued for Office delay in issuing the patent after 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
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Attachments: Copy of adjusted PAIR calculation

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FRISHAUF, HOLTZ, GOODMAN &
CHICK, PC
220 5TH AVE FL 16
NEW YORK, NY 10001-7708

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OFFICE OF PETITIONS

In re Application of	:	
Kaneko et al.	:	DECISION ON APPLICATION
Application No. 09/925,673	:	FOR
Filed: August 9, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. 01376CIP/HG	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE filed September 6, 2007. Applicants request that the initial determination of patent term adjustment set forth in the Notice of Allowance mailed July 26, 2007 be corrected from one hundred ninety-five (195) days to four hundred seventy-three (473) days.

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

On July 26, 2007, the Office mailed a 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 195 days.

Applicants assert that a period of adjustment of two hundred seventy-eight (278) days should be entered. Specifically, applicants assert that in response to the Corrected Notice of Allowance and Fee(s) Due mailed April 5, 2005, the Issue Fee was paid on June 27, 2005. The application was withdrawn from issue by the USPTO in a paper entitled NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(c) mailed June 22, 2006. An Office action was then mailed on August 1, 2006. It is requested that

applicants be afforded a 278-day USPTO delay from four months after the payment of the Issue Fee on June 27, 2005 to the mailing date of the Office action on August 1, 2006. Petitioner argues that the USPTO failed to respond within four months of the aforesaid payment of the Issue Fee on June 27, 2005, as required by 37 CFR 1.702(a)(2).

Applicants state that any patent granted on this application is not subject to a terminal disclaimer.

Applicants' arguments have been considered, but not found persuasive. First, of all, the relevant section to consider Office delay is 1.702(a)(4), not (a)(2). 37 CFR § 1.702(a)(4) provides that:

> subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

Section 1.703(a)(6) pertains to the provisions of 35 U.S.C. 154(b)(1)(A)(iv) and § 1.702(a)(4). Section 1.703(a)(6) specifies that:

> the period is the number of days, if any, beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date the patent was issued.

As stated in the final rule:

> the date the issue fee was paid and all outstanding requirements were satisfied is the later of the date the issue fee was paid or the date all outstanding requirements were satisfied. However, if prosecution in an application is reopened after allowance (see MPEP 1308), all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 (see MPEP 1308). See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

Accordingly, in this instance, the date of payment of the issue fee on June 27, 2005 is not controlling. After payment of the issue fee, prosecution was reopened with the mailing of a NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(c) mailed June 22, 2006. A new Notice of Allowance was mailed on July 26, 2007, and the Issue Fee transmittal was again submitted on September 27, 2007.

Applicants' submission of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

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

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Paper No.

FRISHAUF, HOLTZ, GOODMAN &
CHICK, PC
220 5TH AVE FL 16
NEW YORK, NY 10001-7708

COPY MAILED
AUG 12 2008

In re Patent No. 7,335,765	:	REQUEST FOR RECONSIDERATION
Kaneko et al.	:	OF DECISION
Issue Date: February 26, 2008	:	ON APPLICATION FOR
Application No. 09/925,673	:	PATENT TERM ADJUSTMENT
Filed: August 9, 2001	:	
Atty Docket No. 01376CIP/HG	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed February 14, 2008. This decision is made in light of 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 March 20, 2008. Patentees request reconsideration of the 225 days of patent term adjustment indicated in the above-identified issued patent. Patentees request correction of the patent term adjustment to one thousand sixty-seven (1067) days (225 days plus 842 days).

The request for reconsideration of patent term adjustment is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

BACKGROUND

On July 26, 2007, the Office mailed a 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 195 days.

On September 6, 2007, patentees timely filed the initial application for patent term adjustment. Patentees requested entry of a period of adjustment of two hundred seventy-eight (278) days for Office delay pursuant to 37 CFR 1.702(a)(2) for the period from four months after the payment of the issue fee on June 27, 2005 to the mailing date of the Office action on August 1, 2006.

By decision mailed January 4, 2008, the petition was dismissed. Patentees were advised that 37 CFR 1.702(a)(4) is the rule relevant to the calculation of Office delay in taking action in response to payment of the issue fee (and satisfaction of all outstanding requirements). In addition, patentees were advised that entry of a period of adjustment pursuant to 37 CFR 1.702(a)(4) was not warranted. Citing the final rule,

> the date the issue fee was paid and all outstanding requirements were satisfied is the later of the date the issue fee was paid or the date all outstanding requirements were satisfied. However, if prosecution in an application is reopened after allowance (see MPEP 1308), all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 (see MPEP 1308). See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000),

the Office determined that any period of adjustment calculated under 37 CFR 1.702(a)(4) would run from the date the issue fee was paid in response to the new notice of allowance, September 27, 2007, until the issuance of the patent. (It is noted that as of the mailing of the first decision, the patent had not issued).

OPINION

On February 26, 2008, the application matured into U.S. Patent No. 7,335,765, with a revised patent term adjustment of 225 days. After the mailing of the notice of allowance, a period of adjustment of 30 days was entered pursuant to 37 CFR 1.702(a)(4).

On February 14, 2008, patentees timely submitted this request for reconsideration of the decision on application for patent term adjustment mailed January 4, 2008. Prior to a decision being rendered on the renewed application for patent term adjustment, on March 20, 2008, patentees filed a supplement to the request for reconsideration (in view of the issuance of the patent on February 26, 2008). Patentees assert that the patent term adjustment of 225 days indicated on the patent is in error. Patentees argue that the error is based on the failure of the USPTO to account for a USPTO delay of 842 days, which arose from the June 22, 2006 withdrawal from issue on the initiative of the USPTO after the issue fee was paid on June 27, 2005, which resulted in the patent not issuing until February 26, 2008.

Patentees' arguments have been reconsidered, but not found persuasive.

Patentees calculate an additional period of adjustment of 842 days on the basis that the patent issued on February 26, 2008, which is 872 days after 4 months from the payment of the issue fee on June 27, 2005. This request for 842 days recognizes that a period of adjustment of 30 days has been entered on the basis that the patent issued on February 26, 2008, which is 30 days after 4 months from the date of payment of the issue fee and satisfaction of all outstanding requirements. Patentees indicate that this request is based on 37 CFR 1.702(a)(4).

However, patentees continue to allude to 37 CFR 1.702(a)(2) as a possible basis for relief. As such, it is appropriate to preliminarily state that the Office's actions with respect to issuance of the patent after payment of the issue fee and satisfaction of all outstanding requirements do not pertain to 37 CFR 1.702(a)(2). 37 CFR 1.702(a)(2) provides for adjustment of patent term due to Office failure to respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken. Payment of the issue fee is not a reply under 35 U.S.C. 132 (or of course, an appeal taken under 35 U.S.C. 134). 37 CFR 1.702(a)(2) does not pertain to a delay in taking action after payment of the issue fee. The asserted period of delay is not a period of delay within the meaning of 37 CFR 1.702(a)(2).

With respect to the mailing of the August 1, 2006 Office action, patentees state that the Office unduly delayed in for the first

time applying the Wengel et al. specification to reject the applicants' claims, after the Office withdrew the above-identified application from issue more than a year after applicants paid the issue fee on June 27, 2005. It is regretted that more than a year elapsed from the withdrawal of the application from issue until the mailing of the Office action on August 1, 2006. However, every delay by the Office (or applicant) is not set forth as a basis for entry of a period of adjustment (or a period of reduction). There is no basis in the statute or rules for entry of a period of adjustment for Office delay in taking action after withdrawing an application from issue.

Rather, with respect to the relevant delay in issuing the patent, sections 1.702(a)(4) and 1.703(a)(6) apply. 35 USC 154(b)(1)(A)(iv) provides for entry of a period of adjustment for Office failure to:

> issue a patent within 4 months after the date on which the issue fee was paid under section 151 and all outstanding requirements were satisfied, the term of the patent shall be extended 1 day for each day after the end of the period specified in clause (i), (ii), (iii), or (iv), as the case may be, until the action described in such clause is taken.

37 CFR 1.702(a)(4), implements the statute, by providing for adjustment of patent term due to Office failure to issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied. This is precisely the failure that patentees assert gives rise to entry of a period of adjustment of 872 days.

Section 1.703(a)(6) pertains to the provisions of 35 U.S.C. 154(b)(1)(A)(iv) and § 1.702(a)(4). Section 1.703(a)(6) specifies that:

> the period is the number of days, if any, beginning on the day after the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date the patent was issued.

Patentees' are incorrect in relying solely on the date of payment of the issue fee to calculate this period. As clearly stated in the rules and supported by the statute, the period

begins on the date that is four months after the date the issue fee was paid and all outstanding requirements were satisfied.

Further, it is proper for the Office to determine when all outstanding requirements are satisfied. The Office has stated in the final rule:

> the date the issue fee was paid and all outstanding requirements were satisfied is the later of the date the issue fee was paid or the date all outstanding requirements were satisfied. However, if prosecution in an application is reopened after allowance (see MPEP 1308), all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 (see MPEP 1308). See *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000).

This interpretation is not inconsistent with the statute. Both the statute and the rule consider Office delay based on the date the Office takes action after the issue fee is paid and all outstanding requirements are met. Payment of the issue fee in of itself may not be sufficient to have the patent issue. A patent cannot issue until all outstanding requirements necessary to be satisfied for its issuance have been met. Accordingly, the Office is not deemed to have engaged in examination delay until 4 months after the issue fee has been paid and all outstanding requirements have been met.

Moreover, where prosecution in an application is reopened after allowance, all outstanding requirements are not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151. After reopening of prosecution, the patent cannot issue until all outstanding requirements necessary to be satisfied for its issuance have been met. In the circumstance where the Office determines that withdrawal of the application from issue is appropriate, prosecution is reopened and the patent cannot issue until the matter that served as the basis for the withdrawal from issue is addressed, and if at all, a new Notice of Allowance is issued. Further, regardless of the previous payment of the issue fee, all outstanding requirements are not met until an applicant replies to the new notice of allowance. For the patent to issue (and the application not to be

considered abandoned), applicant must return Part B of the issue fee transmittal. Thus, it is proper to consider all outstanding requirements not satisfied until the application is again in condition for allowance as indicated by the issuance of a new notice of allowance under 35 U.S.C. 151 and applicant properly responds to the new notice of allowance.

In this instance, a new notice of allowance was mailed July 26, 2007 and all outstanding requirements were met when the new issue fee transmittal was submitted on September 27, 2007. The conclusion that the controlling date in calculating the period of adjustment for Office delay pursuant to 37 CFR 1.702(a)(4) is the date of submission of the issue fee transmittal on September 27, 2007 in response to the new notice of allowance mailed July 26, 2007 is affirmed. The period of adjustment of 30 days is correct.

CONCLUSION

The patent issued with a correct patent term adjustment of two hundred twenty-five (225) days.

Patentees' submission of the $200.00 fee set forth in 37 CFR 1.18(e) on initial application for patent term adjustment is acknowledged. No additional fee is required on request for reconsideration of decision on application for patent term adjustment.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 9/925693

Paper No.: —

DATE : 1/30/06

TO SPE OF : ART UNIT 3737

SUBJECT : Request for Certificate of Correction on Patent No.: 6974416 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:

IDS originally submitted now missing from file - Examiner re-reviewed documents listed.

SPE

3768
Art Unit

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

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MAY 2 2 2008

OFFICE OF PETITIONS

In re Application of :
Oskielunas et al. : DECISION ON PETITION
Application No. 09/925,758 :
Filed: August 9, 2001 :
Attorney Docket No. 8567.US02 :

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT filed April 4, 2008.

The petition under 37 CFR 1.181 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 not permitted. See 1.181(f).

Alternatively, petitioner may seek revival under the provisions of 37 CFR 1.137. Such a request should include a cover letter entitled "Petition under 37 C.F.R. § 1.137(a)" or "Petition under 37 C.F.R. § 1.137(b)," as appropriate.

The above-identified application became abandoned for failure to file a timely reply to the non-final Office action mailed June 5, 2007. The Office action set a shortened statutory period for reply of three (3) months, with extensions of time obtainable under § 1.136(a). A reply was filed on December 6, 2007, with a certificate of mailing dated December 4, 2007. The reply included an authorization to charge the fee for the necessary extension of time for response within the third month to a Deposit Account. However, the Deposit Account was determined

not to have sufficient funds to pay the extension of time fee. As the extension of time was necessary to make the response timely, the application became abandoned effective September 6, 2007 for failure to submit a timely response to the non-final Office action. A courtesy Notice of Abandonment was mailed on December 12, 2007.

Petitioner maintains that a response was timely filed. Specifically, petitioner cites the reply filed on December 6, 2007, with a certificate of mailing dated December 4, 2007, and an accompanying extension of time.

Petitioner's arguments and evidence have been considered but not found persuasive. The extension of time authorized the fee to be charged to Deposit Account No. 50-1817. Petitioner does not submit evidence to overcome the Office's conclusion that the Deposit Account did not have sufficient funds to pay the $1,050 extension of time necessary to make the response timely. As shown in the image file wrapper for this application, Office records show that when presented the Deposit Account had only a $746 balance.

In view thereof, the holding of abandonment is considered proper and will not be withdrawn. The petition under § 1.181 is dismissed.

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OFFICE OF PETITIONS

In re Application of	:	
Oskielunas et al.	:	DECISION ON PETITION
Application No. 09/925,758	:	
Filed: August 9, 2001	:	
Attorney Docket No. 8567.US02	:	

This is a decision on the REQUEST FOR RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT filed July 3, 2008.

The above-identified application became abandoned effective September 6, 2007 for failure to file a timely reply to the non-final Office action mailed June 5, 2007. A reply was filed on December 6, 2007, with a certificate of mailing dated December 4, 2007. However, the reply was not timely as the Deposit Account was determined not to have sufficient funds to pay the extension of time fee.

By decision mailed May 21, 2008, the initial petition to withdraw the holding of abandonment filed April 4, 2008 was dismissed. Petitioner did not provide persuasive evidence to overcome the Office's conclusion that the Deposit Account did not have sufficient funds to pay the $1,050 extension of time necessary to make the response timely.

On instant renewed petition, it is acknowledged that the Deposit Account charged did not have sufficient funds. However, petitioner points out that with the reply, an Information Disclosure Statement (IDS) was filed that included a general

authorization to charge any required fees to another Deposit Account.

Petitioner's argument is persuasive. A review of the record confirms that an Information Disclosure Statement (IDS) was filed on December 6, 2007 (with a certificate of mailing dated December 4, 2007). This IDS included a general authorization to charge any fees that may be required at this time to Deposit Account No. 03-2412. Further, finance records for that Deposit Account for December 2007 support a conclusion that had the extension of time been presented for payment, the account would have had sufficient funds to pay the fee.

Pursuant to the authorization, the $1,050 extension of time fee necessary to make the response timely is now being charged to Deposit Account No. 03-2412.

In view thereof, the Notice of Abandonment mailed December 12, 2007 and holding of abandonment are hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 3692 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 consideration of the amendment and IDS resubmitted on petition filed July 3, 2008 (copies of amendment and IDS filed December 6, 2007).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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WASHINGTON DC 20007

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OFFICE OF PETITIONS

In re	: DECISION REGARDING
Takemoto, et al.	: PATENT TERM ADJUSTMENT
Application No. 09/925,789	:
Filed: August 10, 2001	:
Attorney Docket No. 074129-0486	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. §154(b)", filed May 23, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred thirty (530) days to seven hundred nineteen (719) 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 **seven hundred nineteen (719) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 25, 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 five hundred thirty (530) days. On

May 23, 2005, applicants timely[1] submitted the instant 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 seven hundred nineteen (719) days. Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants assert entitlement to a patent term adjustment of seven hundred nineteen (719) days on the basis that the PTO improperly assessed applicants a delay of one hundred eight (108) days for responding to an Office action mailed on July 9, 2004. Applicants assert that they filed a response on August 6, 2004, not on January 25, 2005.

The Office initially determined a patent term adjustment of five hundred thirty (530) days based on an adjustment for PTO delay of six hundred thirty-eight (638) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delay of one hundred eight (108) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b). The adjustmen of 108 days is at issue.

The adjustment of 108 days has been found to be incorrect. Applicants have submitted a copy of a postcard receipt for the instant application, itemizing a "Response to Restriction Requirement (1 pg.)", and bearing a USPTO date stamp of August 6, 2004. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.[2] Accordingly, it is concluded that Applicants timely filed a reply in response to the July 9, 2004 Office action on August 6, 2004, and therefore should not have been assessed a delay of one hundred eight (108) days.

Furthermore, in view of applicants' response filed August 6, 2004, the Office should have been assessed eighty-one (81) days of PTO delay pursuant to 37 C.F.R. §1.703(a)(2), because the Notice of Allowance was not mailed until February 25, 2005.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **seven hundred nineteen (719) days** (719 (638+81) days of PTO delay and 0 days of applicant delay).

---

[1] Applicants filed the PTA application with the issue fee.

[2] MPEP 503.

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

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

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

Kery A. Fries
for

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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DEC 21 2005

OFFICE OF PETITIONS

In re	: DECISION REGARDING
Takemoto, et al.	: PATENT TERM ADJUSTMENT
Application No. 09/925,789	: AND NOTICE OF INTENT TO
Filed: August 10, 2001	: ISSUE CERTIFICATE OF
Attorney Docket No. 074129-0486	: CORRECTION
	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. §154(b)", filed May 23, 2005. Applicants request that the patent term adjustment under 35 U.S.C. 154(b) be corrected to add one (1) day of PTA.

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

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 **seven hundred one (701)** days.

On February 25, 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 was five hundred thirty (530) days. On

May 23, 2005, 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 seven hundred nineteen (719) days. Applicants stated that the patent issuing from the application was not subject to a terminal disclaimer.

The application for patent term adjustment was granted in a decision mailed on October 3, 2005. However, Office records (and the attached PALM Intranet printout) incorrectly reflected that the PTA was only seven hundred eighteen (718) days. Accordingly, applicants filed the instant request for reconsideration on November 15, 2005.

The application is scheduled to issue as patent No. 6,981,680 on January 3, 2006, with a PTA of seven hundred (700) days (reflecting the 120 days of applicant delay for filing an IDS on June 17, 2005, and the 102 days of PTO delay in issuing the patent more than four months after payment of the issue fee). However, in light of the previous error above, a certificate of correction is appropriate.

Given the basis for granting this decision, no fee was required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. 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 **seven hundred one (701)** days subject to any disclaimers.

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

Kery Fries

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

Enc: draft Certificate of Correction

---

[1] Applicants filed the PTA application with the issue fee.

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The Danamraj Law Group, PC/RIM
Attn: Reba Pieczynski
Premier Place, Suite 1450
5910 N. Central Expressway
Dallas, TX 75206

Mail Date: 04/21/2010

Applicant	: Gary Mousseau	: DECISION ON REQUEST FOR
Patent Number	: 7606936	: RECALCULATION of PATENT
Issue Date	: 10/20/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/925,810	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/09/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2567** 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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MINNEAPOLIS MN 55440-1022

In re Application of	:
Murphy	: DECISION ON APPLICATION
Application No. 09/925,824	: FOR PATENT TERM ADJUSTMENT
Filed: August 9, 2001	:
Atty. Dkt. No.: 15132-292001/	:
MPI2000-314	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed September 12, 2006. This matter is being properly treated under 37 CFR 1.705(b) as an application patent term adjustment.

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

Applicant requests that the Determination of Patent Term Adjustment be corrected from 280 days, as indicated on the Determination of Patent Term Adjustment mailed June 12, 2006, to an adjustment of 460 days.

A review of the application history reveals that as of the time of allowance, an adjustment of 670 days can be attributed to the Office, as argued by applicant.

In accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1), an adjustment of 587 days, as undisputed by applicant, can be attributed to the Office for failure to 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.

A further adjustment of 83 days can be attributed to the Office, as argued by applicant, in accordance with 37 CFR 1.702(a)(2). The adjustment began November 20, 2004, the day after the date that is four months after the date a reply to the restriction requirement was filed, and ended February 10, 2005, the date the non-final Office action was mailed. *See*, 37 CFR 1.703(a)(2).

The adjustment of 670 days is properly reduced 210 days, as argued by applicants.

The reductions of 77 days, 36 days, 90 days, and seven days are undisputed by applicant.

However, applicant argues that the reduction of 97 days in connection with the reply submitted November 23, 2004 is in error. Applicant's argue that a response to the non-final Office action was timely submitted July 19, 2004, as established by the copy of a postcard date-stamped by the USPTO indicating receipt of such that is contained in the record. In view thereof, the reduction of 97 days in connection with applicant's reply to the non-final Office action has been restored.

Accordingly, at the time of allowance, the application is entitled to an adjustment of 460 days, as argued by applicant.

Receipt is hereby acknowledged of the required PTA application fee of $200.00.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

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

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Kery A. Fries

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 8

MICHAEL A. BERNADICOU
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
SEVENTH FLOOR
12400 WILSHIRE BOULEVARD
LOS ANGELES, CA 90025-1026

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SEP 01 2004

OFFICE OF PETITIONS

In re Application of	:	
Barrow, Michael	:	
Application No. 09/925,835	:	ON PETITION
Filed: August 7, 2001	:	
Attorney Docket No. 42.P3495C3	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 17, 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 August 23, 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 24, 2001. A Notice of Abandonment was mailed on June 16, 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. 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

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MAYER, FORTKORT & WILLIAMS, PC
251 NORTH AVENUE WEST
2ND FLOOR
WESTFIELD, NJ 07090

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AUG 1 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Stentz, Andrew John	:	
Application No. 09/925,838	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. PH01-01-02	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 8, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit formal drawings, the issue fee and the publication fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed September 2, 2004. Accordingly, the above-identified application became abandoned on December 3, 2004. A Notice of Abandonment was mailed on April 28, 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 the Publishing Division for processing into a patent.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/26/07

TO SPE OF : ART UNIT 2612

SUBJECT : Request for Certificate of Correction for Appl. No.: **09/925867** Patent No.: **7057494**

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**.

Angela Green
Certificates of Correction Branch
703.308.9380 ext. 183

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: _____

DANIEL WU
SUPERVISORY PATENT EXAMINER **SPE**

2612
Art Unit

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COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GO

Paper No. 6

Arent Fox Kintner Plotkin & Kahn PLLC
1050 Connecticut Ave
Suite 400
Washington, DC 20036-5339

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SEP 23 2004

OFFICE OF PETITIONS

In re	:	
Shima et al.	:	DECISION ON PETITION
Reissue Application No. 09/925,887	:	
Filed: August 3, 2001	:	
Reissue of Patent No. 5,931,011	:	
Original Issue Date: August 3, 1999	:	
Attorney Docket No. 100816-00012	:	

This is a decision on the "PETITION TO ACCEPT DRAWING FIGURES ERRONEOUSLY OMITTED UNDER 37 CFR § 1.182," filed December 8, 2003, and supplemented September 21, 2004. The petition requests (a) inclusion of inadvertently omitted unamended drawings from the original patent in the above-identified reissue application and (b) retention of the original filing date of August 3, 2001 for this reissue application. The petition is properly construed as a petition requesting waiver of the requirement of 37 CFR 1.173(a)(2) that the reissue application be filed with a clean copy of each drawing sheet of the printed patent.

The petition is **GRANTED**.

REVIEW OF FACTS

1. On August 3, 2001, the application was deposited as an application for reissue of U.S. Patent No. 5,931,011. The application included a Request for Transfer of the Original Drawings.

2. On December 8, 2003, the present petition (and fee) were filed. Therein, applicants acknowledged that the reissue application as filed on August 3, 2001 did not include the drawings. The petition included copies of the drawings from the original patent.

3. In the December 8, 2003 submission, petitioner asserts that the original of the petition was filed on August 15, 2001. The copy of the petition which is included with the December 8, 2003 submission does not contain a signature, but rather is stamped, in the signature block - "SIGNATURE ON ORIGINAL."

4. On February 4, 2004, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Reissue Application, notifying applicants that the application papers had been accorded a filing date; however, the reissue specification has not been provided in the form of a copy of the printed patent. 37 CFR 1.173(a)(1).

5. On September 20, 2004, petitioner was telephoned by Senior Petitions Attorney Nancy Johnson, and it was requested that petitioner submit a signed copy of the petition. Petitioner did so on September 21, 2004.

DECISION ON PETITION TO ACCORD FILING DATE
AND ACCEPT PAPERS AS COMPLETE APPLICATION

Petitioner acknowledges that the instant reissue application as filed on August 3, 2001 did not include drawings. Petitioner states that the (omitted) drawings which are now associated with the reissue application are unamended from, and identical to, the drawings associated with the original patent. In effect, petitioner requests that the Office excuse the inadvertent omission of the drawings on filing and accord the application a filing date of August 3, 2001.

Since this is a reissue application, the contents of the application are set by rule. The reissue application must include "a clean copy of each drawing sheet of the printed patent at the time the reissue application is filed" (37 CFR 1.173). As such, there is no question as to the drawings intended to be filed in this case. Under these circumstances, the delay in supplying the drawings is excused.

As to the timing of petitioner's submission of the drawings, such drawings were submitted on December 8, 2003. Accordingly, the February 4, 2004, OIPE Notice to File Missing Parts of Reissue Application was effectively timely "responded" to before the Notice was issued. Such response was incomplete as to the failure to include a signed petition; however, the response has now been completed by the supplement to the petition filed September 21, 2004.

In view of the above, this application is accepted as a complete application and accorded a filing date of August 3, 2001.

CONCLUSION

1. The petition is GRANTED.

2. The application is being returned to the Office of Initial Patent Examination for further processing as a reissue application with a filing date of August 3, 2001, using the papers deposited on that date and the fourteen (14) sheets of drawings supplied December 8, 2003

3. Receipt of the response to the Notice to File Missing Parts of Reissue Application filed April 15, 2004 is acknowledged.

4. Telephone inquiries related to this decision should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (703) 305-9282.

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

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MICHAEL E. DERGOSITS
DERGOSITS & NOAH LLP
SUITE 1150
FOUR EMBARCADERO CENTER
SAN FRANCISCO CA 94111

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SEP 22 2006

OFFICE OF PETITIONS

In re Application of	:	
Thwaites et al.	:	
Application No. 09/925,896	:	DECISION ON PETITION
Filed: 9 August, 2001	:	
Atty Docket No. 498.02	:	

This is a decision on the petition filed on 28 March, 2006, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 17 March, 2006, for failure to timely submit the issue and publication fees in response to

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

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

the Notice of Allowance and Fee(s) Due mailed on 16 December, 2005, which set a three (3)-month statutory period for reply. The filing of the present petition precedes the mailing of Notice of Abandonment.

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

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

IPSOLON LLP
805 SW Broadway #2740
Portland, OR 97205

AUG 18 2003

In re Application of:
KAMASHITA
Serial No.: 09/925,905
Filed: August 9, 2001
Attorney Docket No.: **1113-016/MMM**

DECISION ON PETITION

This is a decision in response to the communication filed June 2, 2003. The communication has been treated as a petition under 37 C.F.R. § 1.181, requesting reconsideration of the restriction requirement of claims 18-24 because at least claim 18 is generic to all the species identified by the examiner in the Office action mailed June 25, 2002.

The petition is **GRANTED** to the extent outlined below.

Claims 18-24 and 40-46 read on the elected species of Figures 5a-5c where claim 18 is generic to all the species identified by the examiner. Hence, claims 18-24 along with claims 40-46 will be examined in the instant application.

However, claims 47-55 will continue to be withdrawn from consideration since these claims are neither generic nor read on the elected species of Figures 5a-5c.

The application is being forwarded to the examiner for continued prosecution on the merits.

Sharon Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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IPSOLON LLP
111 SW COLUMBIA
SUITE 710
PORTLAND OR 97201

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OFFICE OF PETITIONS

In re Application of
Kamashita et al.
Application No. 09/925,905
Filed: August 9, 2001
Attorney Docket No. 1113-016/MMM

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 21, 2006, to revive the above-identified application.

This application became abandoned for failure to pay the issue and publication fees as required by the Notice of Allowance and Fee(s) Due mailed on May 2, 2005, which set a three (3) month statutory period for reply. Accordingly, the application became abandoned on August 3, 2005. A Notice of Abandonment was mailed on October 14, 2005.

Petitioner has met the requirements under 37 CFR 1.137(b). Accordingly, the petition is **granted.**

This matter is being forwarded 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 (571) 272-4200.

Telephone inquiries specifically concerning this decision should be directed to the undersigned at (571) 272-3211.

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON DC 20001

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OFFICE OF PETITIONS

ON PETITION

In re Application of	:	
Harman et al.	:	
Application No. 09/925,932	:	
Filed: August 9, 2001	:	
Attorney Docket No. 006020.00012	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 21, 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 with payment of the issue and publication fees; (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

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United States Patent and Trademark Office
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SOFER & HAROUN LLP
SUITE 910
317 MADISON AVENUE
NEW YORK, NY 10017

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OFFICE OF PETITIONS

In re Application of	:
Yusuke Yajima et al	: DECISION ON PETITION
Application No. 09/925,961	: UNDER 37 CFR 1.137(b)
Filed: August 9, 2001	:
Attorney Docket No. 773-013	:

This is a decision on the 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 by operation of law for failure to timely pay the issue and publication fees on or before June 22, 2006 as required by the Notice of Allowance and Fee(s) Due, mailed March 22, 2006.

The petition satisfies the requirements for a grantable petition in that the reply in the form of payment of the $1,400 issue fee and $300 publication fee, the petition fee of $1,500, and an adequate statement of unintentional delay have been submitted. Accordingly, the submission of the issue and publication fees is accepted as having been unintentionally delayed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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6-8-09

Patent No. : 7,133,614
Ser. No. : 09/925,961
Inventor(s) : Yajima, et. al.
Issued : August 9, 2001

Re: Request for Certificate of Correction

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

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

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

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

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) 756-1583 or 1580

Sofer & Haroun
317 Madison Avenue, Suite 910
New York, New York 10017

ej

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United States Patent and Trademark Office
P.O. Box 1450
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PILLSBURY WINTHROP LLP
INTELLECTUAL PROPERTY GROUP
1600 TYSONS BOULEVARD
MCLEAN VA 22102

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OFFICE OF PETITIONS

In re Patent No. 6,940,865	:	
Issue Date: September 6, 2005	:	
Application No. 09/925,978	:	NOTICE
Filed: August 9, 2001	:	
Attorney Docket No. P73169 0278153 ATH-030(U)	:	

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**.

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 patent. If the person signing the instant petition desires to receive future correspondence regarding this patent, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed solely to the address currently of record until such time as appropriate instructions are received to the contrary.

This 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.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: BEVER, HOFFMAN & HARMS, LLP
2099 GATEWAY PLACE, SUITE 320
SAN JOSE, CA 95110

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MERCHANT & GOULD BELLSOUTH CORPORATION
P.O. BOX 2903
MINNEAPOLIS, MN 55402

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JUN 06 2007

OFFICE OF PETITIONS

In re Application of
Gopal N. Iyer
Application No. 09/925,991
Filed: August 9, 2001
Attorney Docket No. 60027.0022US01

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on November 30, 2006 and January 9, 2007, 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 May 24, 2006. A Notice of Abandonment was mailed on September 28, 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**.

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.

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

MAR 2 7 2002

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Bacon & Thomas, PLLC
625 Slaters Lane - 4th Floor
Alexandria, VA 22314-1176

In re Application of	:	
HAGHIRI, Yahya et al.	:	
Application No.: 09/926,010	:	DECISION ON
PCT No.: PCT/EP00/01272	:	
Int. Filing Date: 16 February 2000	:	PAPERS
Priority Date: 17 February 1999	:	
Attorney's Docket No.: HAGH3001/JEK	:	UNDER 37 C.F.R. 1.42
For: PORTABLE DATA SUPPORT WITH A	:	
DETACHABLE MINI CHIP CARD	:	

This is a decision on applicants' response to the Notification of Missing Requirements, filed 06 March 2002, which has been treated as a request for status under 37 C.F.R. 1.42.

BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator do not have exact counterparts in all foreign countries, ... the terms must be construed to fit the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

In this case, Szahra Haghiri, Mana Haghiri and Touba Haghiri each signed the declaration on their own behalf as heirs to Yahya Haghiri and Touba Haghiri signed the declaration as parent for minor Sina Haghiri, who also is an heir to Yahya Haghiri.

However, neither the heirs nor their attorney have stated that the listed heirs are the "sole heirs" or "all of the heirs" of Yahya Haghiri or that these heirs are collectively the "legal representative" of Yahya Haghiri. By only identifying each as an heir, the possibility of additional nonsigning heirs of Yahya Haghiri was left open.

Under 37 CFR 1.497(b)(2), the declaration must include the residence, mailing address and citizenship of the person(s) signing on behalf of the deceased inventor (in addition to the full name and citizenship of the deceased inventor). The declaration is signed by Touba Haghiri and the blocks that follow list the residence address as "Winzererstrasse 98, D-80797 Munchen, Germany" and citizenship as Iran. It is unclear whether this is the information of Touba Haghiri or the information for the deceased inventor, but both must be provided and the information provided must be clearly identified.

Additionally, a minor may sign the declaration provided the minor has capacity, *i.e.*, that the minor understands the document. MPEP §409. Otherwise, a legal representative must sign for the minor. See 37 CFR 1.43.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

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

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

17 JAN 2003

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Bacon & Thomas, PLLC
625 Slaters Lane - 4th Floor
Alexandria, VA 22314-1176

In re Application of HAGHIRI, Yahya et al. Application No.: 09/926,010 PCT No.: PCT/EP00/01272 Int. Filing Date: 16 February 2000 Priority Date: 17 February 1999 Attorney's Docket No.: HAGH3001/JEK For: PORTABLE DATA SUPPORT WITH A DETACHABLE MINI CHIP CARD	DECISION ON REQUEST UNDER 37 C.F.R. 1.42

This is a decision on applicants' "New Submission Under 37 C.F.R. §1.42 and Request For Reconsideration" filed on 21 October 2002.

BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

On 27 March 2002, the Office mailed Decision on Papers Under 37 CFR 1.42 refusing applicants' request for status.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator do not have exact counterparts in all foreign countries, ... the terms must be construed to fit

the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

In this case, Szahra Haghiri, Mana Haghiri and Touba Haghiri each signed the declaration on their own behalf as heirs to Yahya Haghiri and Touba Haghiri signed the declaration as parent for minor Sina Haghiri, who also is an heir to Yahya Haghiri.

Counsel for applicants has stated that the four heirs are all of the heirs. Counsel states that a legal representative of the deceased's estate is not required to be appointed under German law. As the heirs are signing as the heirs of the estate, it is understood that not only is a legal representative not required to be appointed, but that none has been appointed and that the heirs are acting as the legal representatives of the estate. If this is not a correct interpretation, applicants must notify the office immediately.

Under 37 CFR 1.497(a)(3), the declaration must state the citizenship of the inventor. On the first page of the declaration, Yahya Haghiri is identified as a citizen of Germany. On page three, Yahya Haghiri is identified as a citizen of Iran. The declaration fails to comply with 37 CFR 1.497(a)-(b).

Additionally, a minor may sign the declaration provided the minor has capacity, *i.e.*, that the minor understands the document. MPEP §409. Otherwise, a legal representative must sign for the minor. See 37 CFR 1.43.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

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

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

22 AUG 2003

#8

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Bacon & Thomas, PLLC
625 Slaters Lane - 4th Floor
Alexandria, VA 22314-1176

In re Application of HAGHIRI, Yahya et al. Application No.: 09/926,010 PCT No.: PCT/EP00/01272 Int. Filing Date: 16 February 2000 Priority Date: 17 February 1999 Attorney's Docket No.: HAGH3001/JEK For: PORTABLE DATA SUPPORT WITH A DETACHABLE MINI CHIP CARD	DECISION ON REQUEST UNDER 37 CFR 1.42

This is a decision on applicants' "Renewed Submission Under 37 C.F.R. §1.42" filed on 15 April 2003.

BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

On 27 March 2002, the Office mailed Decision on Papers Under 37 CFR 1.42 refusing applicants' request for status.

On 17 January 2003, the Office mailed Decisison On Request Under 37 CFR 1.42, refusing applicants' request.

On 15 April 2003, applicants submitted "Renewed Submission Under 37 C.F.R. §1.42."

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator do not have exact counterparts in all foreign countries, ... the terms must be construed to fit the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

Counsel for applicants has stated that Yahya Haghiri had four heirs: Szahra Haghiri, Mana Haghiri, Sina Haghiri and Touba Haghiri.

The 06 March 2002 declaration failed to list either the information for the deceased inventor or for Touba Haghiri. The 21 October 2002 declaration listed contradictory citizenships for Yahya Haghiri and only listed two of the heirs. The 15 April 2003 declaration lists consistent citizenship for Yahya Haghiri, but again the declaration only lists two of the heirs and is only executed by Touba Haghiri on her bahalf and on behalf of Sina Haghiri.

It is noted that a minor may execute a declaration if the minor has capacity, i.e. understands the document. MPEP §409. It is noted that Sina Haghiri is sixteen years old. A legal representative may sign for a minor if the minor lacks capacity.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

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

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

04 JUN 2004

#10

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625 Slaters Lane - 4th Floor
Alexandria, VA 22314-1176

In re Application of HAGHIRI, Yahya et al. Application No.: 09/926,010 PCT No.: PCT/EP00/01272 Int. Filing Date: 16 February 2000 Priority Date: 17 February 1999 Attorney's Docket No.: HAGH3001/JEK For: PORTABLE DATA SUPPORT WITH A DETACHABLE MINI CHIP CARD	DECISION ON REQUEST UNDER 37 CFR 1.42

This is a decision on applicants' "Renewed Submission Under 37 C.F.R. §1.42" filed on 10 December 2003.

BACKGROUND

On 16 February 2000, applicants filed international application PCT/EP00/01272. On 24 August 2000, a Demand was filed with the International Preliminary Examining Authority within nineteen months of the priority date, in which the United States was elected. Accordingly, the deadline for entry into the national stage in the United States was midnight on 17 August 2001.

On 14 August 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 06 September 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the fee for filing the oath or declaration later than thirty months were required.

On 06 March 2002, applicants filed a response to Notification of Missing Requirements accompanied by, *inter alia*, a declaration executed by heirs of the deceased, a petition for a four month extension of time and the fee for the four month extension of time.

On 27 March 2002, the Office mailed Decision on Papers Under 37 CFR 1.42 refusing applicants' request for status.

On 17 January 2003, the Office mailed Decision On Request Under 37 CFR 1.42, refusing applicants' request.

On 15 April 2003, applicants submitted "Renewed Submission Under 37 C.F.R. §1.42."

On 22 August 2003, the Office refused applicants' renewed request for status under 37 CFR 1.42.

On 10 December 2003, applicants submitted a second renewed request accompanied by a new declaration and the fee for a two month extension of time.

DISCUSSION

Under 35 U.S.C. §117, legal representatives of deceased inventors may make application for patent upon compliance with the requirements and on the same terms and conditions applicable to the inventor. The "legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent." 37 CFR 1.42. As "the terms 'Executor' and 'Administrator do not have exact counterparts in all foreign countries, ... the terms must be construed to fit the circumstances of the case." MPEP 409.01(d). Thus, "the person or persons having authority corresponding to that of executor or administrator are permitted to make application..." MPEP 409.01(d).

The submission of the declaration signed by the heirs is construed as an indication that a legal representative has not been appointed nor is one required to be appointed by applicable law, and thus, the heirs are signing as the legal representative of the estate. See MPEP 409.01(d). If this interpretation is incorrect, applicants are required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to the decision. The new declaration complies with 37 CFR 1.497(a)-(b) and 37 CFR 1.42.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **GRANTED**.

The application has an international filing date of 16 February 2000 under 35 U.S.C. §363 and a date of 10 December 2003 under 35 U.S.C. §371(c)(1), (c)(2) and (c)(4). This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

E M Pender

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KRATZ, QUINTOS & HANSON, LLP
1420 K Street, N.W.
Suite 400
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Patent No. 7,176,163	:	
Issue Date: February 13, 2007	:	
Application No. 09/926,064	:	DECISION ON PETITION
Filed: August 23, 2001	:	
Attorney Docket No. 011047	:	

This is a decision on the petition filed May 7, 2007, which is being treated as a request under 37 CFR 3.81(b)[1] to correct the name of the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED**.

The patent file is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3218. Inquiries regarding the issuance of a certificate of correction should be directed to the Certificate of Correction Branch at (571) 272-4200.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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MR. KAVEH VESSAL
1665 LINCOLN MEADOWS
#1021
SCHAUMBERG, IL 60173

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OFFICE OF PETITIONS

In re Application of:
Tell et al.
Application No. 10/034890
Filing or 371(c) Date: 12/28/2001
Attorney Docket Number: CE03957R

LETTER

Dear Mr. Vessal:

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 (571) 272-3232. 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).

Derek L. Woods
Attorney
Office of Petitions

CC: MOTOROLA, INC.
1303 EAST ALGONQUIN ROAD
IL01/3RD
SCHAUMBURG IL 60196

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Mailed: SEP 20 2002

Paper Number 9
UR

In re application of	:	
Takenobu Sunagawa et al.	:	DECISION ON
Serial No. 09/926,085	:	PETITION
Filed: August 27, 2001	:	
For: PROCESSING AID FOR THERMOPLASTIC RESIN AND	:	
THERMOPLASTIC RESIN COMPOSITION	:	
CONTAINING THE SAME	:	

This is a decision on the PETITION TO EXPUNGE UNDER 37 C.F.R. 1.182, filed on August 16, 2002 which has been accepted as a timely petition under 37 CFR 1.59(b) and MPEP 724.05, II, and is before the Group Director of Technology Center 1700 for consideration.

DECISION

Petitioner requests that a document submitted on February 14, 2002, be expunged from the record. Petition states that the "claim for priority and Japanese priority document " was filed in error. The petition fee set forth in 37 C.F.R. 1.17(h) has been paid.
Petitioner has not established that the failure to return the priority paper will result in irreparable harm to the party. Nor is it averred that the expunged material will be retained for the term of any patent that may issue from this application.
Criteria for granting the request as set forth in MPEP 724.05, II, items A through F, has not been satisfied.

The petition is **DISMISSED.**

Richard V. Fisher

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

Armstrong, Westerman & Hattori, LLP
1725 K Street, N.W., Suite 100
Washington, DC 20006

NOV 3 0 2001

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www.uspto.gov

Brian Jones
BLANK ROME COMISKY & MCCAULEY
900 17th Street, N.W., Suite 1000
Washington, D.C. 20006

In re Application of: TORRES, Matthew, et al. U.S. Application No.: 09/926,094 PCT No.: PCT/US00/34355 International Filing Date: 20 December 2000 Priority Date: 22 December 1999 Attorney's Docket No.: 114122.0115US For: FLOW-THRU CHIP CARTRIDGE, CHIP HOLDER, SYSTEM AND METHOD THEREOF	DECISION ON PETITION TO REVIVE ABANDONED APPLICATION UNDER 37 CFR 1.137(b)

The petition to revive under 37 CFR 1.137(b) filed 30 August 2001 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that the "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" meets the requirements of 37 CFR 1.137(b)(3).

Applicants have now submitted the basic national fee, and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application is granted as to the national stage in the United States of America.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than twenty months after the priority date.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

12 MAR 2003

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Brian Jones
BLANK ROME COMISKEY & MCCAULEY
900 17th Street NW Suite 1000
Washington, DC 20006

In re Application of	:	
TORRES, Matthew, et al.	:	
U.S. Application No.: 09/926,094	:	
PCT No.: PCT/US00/34535	:	DECISION ON PETITION
International Filing Date: 20 December 2000	:	UNDER 37 CFR 1.47(a)
Priority Date: 22 December 1999	:	
Attorney's Docket No.: 114122.0115US	:	
For: FLOW-THRU CHIP CARTRIDGE, CHIP	:	
HOLDER, SYSTEM AND METHOD THEREOF	:	

This decision is issued in response to applicants' petition under 37 CFR 1.47(a) filed on 01 October 2002. Applicants have submitted the required petition fee.

BACKGROUND

On 20 December 2000, applicants filed international application PCT/US00/34535 which claimed a priority date of 22 December 1999 and which designated the United States.

A Demand was not filed with the International Preliminary Examining Authority electing the United States prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was twenty months from the priority date, i.e., 22 August 2001.

On 30 August 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a petition to revive the application under 37 CFR 1.137(b) (because the basic national fee had not been submitted prior to the 22 August 2001 deadline, the application had become abandoned as of midnight on 22 August 2001).

On 30 November 2001, this Office issued a decision granting applicant's petition to revive under 37 CFR 1.137(b).

On 01 April 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497, the small entity surcharge for filing the declaration later than 30 months after the priority date, and additional fees based on the number and form of the claims presented, were required.

On 01 October 2002, applicants filed responsive materials which included payment of the required surcharge and fees, declarations executed by four of the five named inventors, the petition under 37 CFR 1.47(a) considered herein, and a petition/fee four a four month extension of time. Based on this extension, the 01 October 2002 filing is considered a timely response to the Notification Of Missing Requirements mailed 01 April 2002.

The petition seeks acceptance of the application without the signature of the nonsigning inventor Ian Stuart Richard SMITH, whom applicants assert cannot be located after diligent effort.

DISCUSSION

In order for the application to be accepted without the signature of the nonsigning inventor, applicants must submit a grantable petition under 37 CFR 1.47(a). A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the proper petition fee, (2) a statement of the last known address of the inventor; (3) an oath or declaration executed by the other inventors on their own behalf and on behalf of the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

The petition included payment of the $130 petition fee and it sets forth the last known address of the nonsigning inventor. Items (1) and (2) are therefore satisfied.

With respect to item (3), applicants section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

> An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicant has submitted a declaration containing an unexecuted signature block for the nonsigning inventor and executed by the other inventors. Item (3) is therefore satisfied.

Regarding item (4), the proof required to show that a nonsigning inventor cannot be reached after diligent effort is set forth in section 409.03(d) of the MPEP, which states:

> Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

...

> The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail, return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts. It is important that the statement contain facts as opposed to conclusions.

Here, the attempts to contact the nonsigning inventor are set forth in the statement of facts executed by above-named counsel. This statement reveals that applicants have mailed application materials to the nonsigning inventor's last known address (no longer current) and made a single telephone call was made to the inventor's last known employer (the call was not returned). The statement does not set forth any further efforts made to locate the inventor after applicants learned that the inventor had left his last known address and employer. Applicants must describe such search efforts (i.e., internet search, follow-up communications with the inventor's previous employer, etc.) before it can be concluded that the nonsigning inventor cannot be reached after diligent effort. Accordingly, item (4) is not satisfied.

Based on the foregoing, applicants have not satisfied all the requirements for a grantable petition under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and should include adequate evidence that the nonsigning inventor cannot be located after diligent effort including, as discussed above, evidence of efforts made by applicants to locate the nonsigning inventor after learning that his last known address was not current.

No additional petition fee is required. Failure to file a timely response will result in abandonment of the application.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the International Division, Legal Staff.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

15 OCT 2003

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Brian Jones
BLANK ROME COMISKEY & MCCAULEY
900 17th Street NW Suite 1000
Washington, DC 20006

In re Application of: TORRES, Matthew, et al.	:	
U.S. Application No.: 09/926,094	:	
PCT No.: PCT/US00/34535	:	DECISION ON RENEWED
International Filing Date: 20 December 2000	:	PETITION UNDER
Priority Date: 22 December 1999	:	37 CFR 1.47(a)
Attorney's Docket No.: 114122.0115US	:	
For: FLOW-THRU CHIP CARTRIDGE, CHIP	:	
HOLDER, SYSTEM AND METHOD THEREOF	:	

In a decision mailed 12 March 2003, applicants' petition under 37 CFR 1.47(a) for acceptance of the application without the signature of inventor Ian Stuart Richard Smith was dismissed for failure to satisfy all the requirements of a grantable petition.

On 12 May 2003, applicants filed a response, considered herein, which included a declaration executed by the previously nonsigning inventor, Mr. Smith. Based on this submission, applicants' petition under 37 CFR 1.47(a) is now **MOOT**.

However, the declaration filed on 12 May 2003 and executed by Mr. Smith is not acceptable under 37 CFR 1.497. Specifically, the declaration executed by Mr. Smith does not identify all the inventors herein (Mr. Smith is the only inventor named on the declaration).

Applicants must submit a revised declaration executed by Mr. Smith which names all the inventors herein and which otherwise satisfies the requirements of 37 CFR 1.497. This revised declaration must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Failure to file a timely response will result in abandonment of the application.

Please address future correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

26 FEB 2004

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P.O. BOX 1450
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Brian Jones
BLANK ROME COMISKEY & MCCAULEY
900 17th Street NW Suite 1000
Washington, DC 20006

In re Application of: TORRES, Matthew, et al.	:	
U.S. Application No.: 09/926,094	:	
PCT No.: PCT/US00/34535	:	DECISION ON REVISED
International Filing Date: 20 December 2000	:	DECLARATION
Priority Date: 22 December 1999	:	
Attorney's Docket No.: 114122.0115US	:	
For: FLOW-THRU CHIP CARTRIDGE, CHIP	:	
HOLDER, SYSTEM AND METHOD THEREOF	:	

In a decision mailed 15 October 2003, applicants' petition under 37 CFR 1.47(a) was held moot as a result of applicants' filing a declaration executed by the previously nonsigning inventor Ian Stuart Richard Smith. However, the decision stated that the declaration executed by Mr. Smith was not acceptable under 37 CFR 1.497 because the declaration did not identify the other inventors herein.

Om 12 November 2003, applicants filed a response to the 15 October 2003 decision. The submission included a revised declaration executed by Mr. Smith which identifies all the inventors and is acceptable under 37 CFR 1.497. It is noted that the declaration lists an incorrect title and attorney docket number; however, the declaration is considered to adequately identify the application to which it is directed because it properly identifies the application number and filing date (see MPEP § 602).

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 12 November 2003.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

JAN 08 2002

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WASHINGTON, D.C. 20231
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Jacobson Holman PLLC
400 7th Street, N.W., Suite 600
Washington, DC 20004

In re Application of BECKMANN, Alexander Application No.: 09/926,120 PCT Application No.: PCT/DE00/04447 International Filing Date: 14 December 2000 Priority Date: 14 December 1999 Attorney Docket No.: P67117US0 For: SULFIDIZATION OF SULFIDE ORES FOR HYDROMETALLURGICAL EXTRACTION OF COPPER AND OTHER METALS	:	DECISION ON PETITIONS UNDER 37 CFR 1.137(b) AND 37 CFR 1.181

Applicant's "Petition for Revival of an Application For Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office on 19 September 2001 is **GRANTED**.

Applicant's "Response to Notification of Missing Requirements Under 37 U.S.C. 371" stating that the oath or declaration was earlier filed on 19 September 2001, is being treated as a petition to vacate the Notice of Missing Requirements (Form PCT/DO/EO/905). The petition under 37 CFR 1.181 is **GRANTED**.

BACKGROUND

On 14 December 2000, applicant filed an international application, No. PCT/DE00/04447. A copy of the application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 June 2001. The twenty month time period for entering the national stage expired at midnight on 14 August 2001.

On 06 September 2001, applicant filed a transmittal letter accompanied by, *inter alia*, the basic national fee and a preliminary amendment.

On 19 September 2001, applicant filed a Petition for Revival of an International Application For Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.1.37(b) by facsimile at 7:08pm. At 7:32pm, applicant submitted by facsimile, a Supplement to Petition for Revival, which was accompanied by a Combined Declaration and Power of Attorney.

On 22 October 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) informing applicant that an oath or declaration of the inventors was required.

On 06 December 2001, applicant filed a Response to Notification of Missing Requirements stating that the oath or declaration had been filed on 19 September 2001 and enclosed a copy of the fax and a copy of the declaration.

DISCUSSION

PETITION TO REVIVE

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) 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, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicant states "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). The appropriate national fee and petition fee have been submitted. A terminal disclaimer is not required as application was filed on 14 December 2000. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

REQUEST TO VACATE NOTICE OF MISSING REQUIREMENTS

On 15 August 2001, the international application went abandoned for failure to timely file the basic national fee. On 19 September 2001, applicant submitted a combined declaration and power of attorney. On 22 October 2001, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905). The Notification was in error because (1) the application was abandoned and (2) the oath or declaration had been earlier filed.

FEES

The surcharge for late filing of the English translation will be charged to Deposit Account No. 06-1358 as authorized by the transmittal letter filed 06 September 2001.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

The Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 22 October 2001 is **VACATED**.

Applicant's claim for priority is acknowledged. The application has an international filing date of 14 December 2000 under 35 U.S.C. §363 and a date of **19 September 2001** under 35

U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.

Boris Milef
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

DEC 2 0 2001

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Steven F. Meyer
MORGAN & FINNEGAN, LLP
345 Park Avenue
New York, New York 10154-0053

In re Application of:	:	
MURAKAMI, Kazuo, et al.	:	DECISION ON PETITION TO
U.S. Application No.: 09/926,144	:	REVIVE ABANDONED
PCT No.: PCT/JP00/08761	:	APPLICATION UNDER 37
International Filing Date: 11 December 2001	:	CFR 1.137(b)
Priority Date: 17 December 1999	:	
Attorney's Docket No.: 5000-4943	:	
For: COMPRESSOR AND METHOD OF	:	
LUBRICATING THE COMPRESSOR	:	

The petition to revive under 37 CFR 1.137(b) filed 07 September 2001 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statement that the "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" and the accompanying explanation meet the requirements of 37 CFR 1.137(b)(3).

Applicants have now submitted the basic national fee and the requirements of 37 CFR 1.137(b) have been satisfied. Therefore, the request to revive the application is granted as to the national stage in the United States of America.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed declaration in compliance with 37 CFR 1.497.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

20 AUG 2004

#10

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P.O. Box 1450
Alexandria, VA 22313-1450
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MORGAN & FINNEGAN
345 Park Avenue
New York, NY 10154

In re Application of:	:	
MURAKAMI, Kazuo, et al.	:	DECISION ON PETITION TO
U.S. Application No.: 09/926,144	:	WITHDRAW HOLDING OF
PCT No.: PCT/JP00/08761	:	ABANDONMENT
International Filing Date: 11 December 2000	:	
Priority Date: 17 December 1999	:	
Atty Docket No.: 5000-4943	:	
For: COMPRESSOR AND METHOD OF	:	
LUBRICATING THE COMPRESSOR	:	

This decision is issued in response to the "Request For Withdrawal Of Improper Notice Of Abandonment" filed 23 January 2004 and treated herein as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 11 December 2000, applicants filed international application PCT/JP00/08761 which claimed a priority date of 17 December 1999 and which designated the United States. The deadline for submission of the basic national fee was twenty months from the priority date, i.e., 17 August 2001.

On 07 September 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee, a translation of the international application into English, and a petition to revive the international application under 37 CFR 1.137(b).

On 20 December 2001, this Office issued a decision granting applicants' petition to rvive the application. The decision stated that the application file was "being returned to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed declaration in compliance with 37 CFR 1.497."

Pursuant to the 20 December 2001 decision, on 01 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration was required.

On 07 October 2002, applicants filed, among other materials, a Status Request that stated that applicants had received no further Communications from the Office after the 20 December 2001 decision. The 07 October 2002 submission did not include an oath or declaration.

On 04 December 2003, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification Of Missing Requirements mailed 01 February 2002.

On 23 January 2004, applicants filed the petition considered herein. The petition asserts that applicant did not receive the originally mailed Notification Of Missing Requirements, and that the holding of abandonment should therefore be withdrawn.

DISCUSSION

Section 711.03(c)II of the MPEP sets forth the requirements for a grantable petition to demonstrate the failure to receive an Office communication:

> 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 the 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.

Here, the petition contains the required statements from practitioner that the Notification Of Missing Requirements was not received and that a review of the file and docket records indicates that the Notification was not received.

With respect to the docket records requirement, applicants have provided a docket record with respect to this particular application; this record does not indicate receipt of the Notification Of Missing Requirements. However, the docket record provided does not satisfy the docket records requirement for a grantable petition. Applicant is required to provide a copy of the office docket for counsel's office for the date a response to the Notification was due, i.e., 01 April 2002.

Based on the above, applicants have failed to satisfy all the requirements for a grantable petition. Accordingly, at the present time, it cannot be concluded that the Notification Of Missing Requirements was not received by applicant.

It is noted that applicants still have not submitted the materials required by the Notification Of Missing Requirements, i.e., an oath or declaration in compliance with 37 CFR 1.497.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is **DISMISSED** without prejudice. The application remains abandoned.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181" and must include the required docket records, as discussed above.

A courtesy copy of the Notification Of Missing Requirements (Form PCT/DO/EO/905) mailed 01 February 2002 is enclosed herewith.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (703) 308-6155
Facsimile: (703) 308-6459

Encl.:
Notification Of Missing Requirements (Form PCT/DO/EO/905), mailed 01 February 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents Box PCT
United States Patent and Trademark Office
Washington, D.C. 20231
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U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY DOCKET NO.
09/926,144	Kazuo Murakami	5000-4943

INTERNATIONAL APPLICATION NO
PCT/JP00/08761

I.A. FILING DATE	PRIORITY DATE
12/11/2000	12/17/1999

27123
MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK, NY 10154

CONFIRMATION NO. 9479

371 FORMALITIES LETTER

OC000000007371438

Date Mailed: 02/01/2002

NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)

The following items have been submitted by the applicant or the IB to the United States Patent and Trademark Office as a Designated Office (37 CFR 1.494):

- U.S. Basic National Fees
- Priority Document
- Copy of references cited in ISR
- Copy of the International Application
- Copy of the International Search Report
- Information Disclosure Statements
- Preliminary Amendments
- Request for Immediate Examination

The following items **MUST** be furnished within the period set forth below in order to complete the requirements for acceptance under 35 U.S.C. 371:

- Oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date.

ALL OF THE ITEMS SET FORTH ABOVE MUST BE SUBMITTED WITHIN TWO (2) MONTH FROM THE DATE OF THIS NOTICE OR BY 22 or 32 MONTHS (where 37 CFR 1.495 applies) FROM THE PRIORITY DATE FOR THE APPLICATION, WHICHEVER IS LATER. FAILURE TO PROPERLY RESPOND WILL RESULT IN ABANDONMENT.

The time period set above may be extended by filing a petition and fee for extension of time under the provisions of 37 CFR 1.136(a).

Applicant is reminded that any communications to the United States Patent and Trademark Office must be mailed to the address given in the heading and include the U.S. application no. shown above (37 CFR 1.5)

BEST AVAILABLE COPY

*A copy of this notice **MUST** be returned with the response.*

MAMIE P PERSON

Telephone: (703) 305-3737

PART 2 - OFFICE COPY

U.S. APPLICATION NUMBER NO	INTERNATIONAL APPLICATION NO. -	ATTY DOCKET NO
09/926,144	PCT/JP00/08761	5000-4943

28 OCT 2004

#12

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United States Patent and Trademark Office
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MORGAN & FINNEGAN
345 Park Avenue
New York, NY 10154

In re Application of:	:	
MURAKAMI, Kazuo, et al.	:	DECISION ON PETITION TO
U.S. Application No.: 09/926,144	:	WITHDRAW HOLDING OF
PCT No.: PCT/JP00/08761	:	ABANDONMENT
International Filing Date: 11 December 2000	:	
Priority Date: 17 December 1999	:	
Atty Docket No.: 5000-4943	:	
For: COMPRESSOR AND METHOD OF	:	
LUBRICATING THE COMPRESSOR	:	

In a decision mailed on 20 August 2004, this Office dismissed without prejudice applicant's petition to withdraw the holding of abandonment for failure to satisfy all the requirements of a grantable petition. Specifically, applicants had failed to provide a copy of the office docket for counsel's office for the date a response to the Notification of Missing Requirements was due, i.e., 01 April 2002.

On 19 October 2004, applicants filed the renewed petition considered herein. The response includes copies of the required docket records. Applicants have now satisfied all requirements for a grantable petition. Accordingly, the petition to withdraw the holding of abandonment mailed 01 February 2002 is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/905) mailed 04 December 2003 is hereby **VACATED**.

It is noted that the 19 October 2004 submission included the materials required by the Notification Of Missing Requirements, that is, an executed declaration in compliance with 37 CFR 1.497.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 19 October 2004.

Richard M. Ross
PCT Petitions Attorney
PCT Legal Office
Telephone: (571) 272-3296
Facsimile: (571) 273-0459

MAY 01 2002

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Oblon Spivak McClelland Maier & Nuestadt
Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202

In re Application of	:	
Shiraishi, Naomasa	:	
Application No.: 09/926,149	:	DECISION VACATING
PCT No.: PCT/JP00/00604	:	
Int. Filing Date: 04 February 2000	:	NOTIFICATION OF MISSING
Priority Date: 12 March 1999	:	
Attorney Docket No.: 213876US2PCT	:	REQUIREMENTS
For: EXPOSURE APPARATUS AND EXPOSURE METHOD, AND DEVICE MANUFACTURING METHOD	:	

This application is before the PCT Legal Office for issues arising under 35 U.S.C. 371.

On 04 February 2000, applicants filed international application PCT/JP00/00604 which claimed a priority date of PCT/JP00/00604. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 21 September 2000. A DEMAND for preliminary examination was not filed prior to the expiration of the 19 months from the priority date. Accordingly, the twenty-month period for paying the basic national fee expired at midnight on 12 September 2001.

On 12 September 2001, applicant filed a Transmittal Letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. 371. Filed with the Transmittal Letter were, *inter alia*, the requisite basic national fee of $860 and an English translation of the international application.

On 23 November 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements (PCT/DO/EO/905) requiring submission of an oath or declaration in compliance with 37 CFR 1.497 and the surcharge under 37 CFR 1.492(e) U.S.C. 371 (Form PCT/DO/EO/905) indicating that the declaration was not in compliance with 37 CFR 1.66 or 37 CFR 1.68. The notification was mailed to an address that was not the correspondence address listed on the Transmittal Letter filed 12 September 2001.

Since the Notification of Missing Requirements was mailed to address that was not listed on the Transmittal Letter, the Notification of Missing Requirements (Form PCT/DO/EO/905) dated 23 November 2001 is hereby **VACATED**.

The application is being returned to the DO/EO/US for processing in accordance with this decision, that is, for mailing a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that the oath or declaration requirement of 35 U.S.C. 371(c)(4) has not been satisfied.

The correspondence address currently listed in the PALM database will be corrected to: Oblon Spivak McClelland Maier & Nuestadt, Fourth Floor, 1755 Jefferson Davis Highway, Arlington, VA 22202.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

Anthony Smith
Attorney-Advisor
PCT Legal Office
Telephone: (703) 308-6314
Facsimile: (703) 308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: ____

DATE : 4/21/05

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction on Patent No.: 6842221 B1

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

Please complete this form and return with file, within **7** days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

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

Virginia Tolbert

Thank You For Your Assistance

Certificates of Correction Branch

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

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

Comments:

Alan A. Mathews — **SPE**

2851 — **Art Unit**

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JAN 03 2002

Oblon, Spivak, McClelland, Maier & Neustadt, P.C.
Fourth Floor
1755 Jefferson Davis Hwy
Arlington, VA 22202

In re Application of WAKABAYASHI, Hidehiko, et al. Application No.: 09/926,180 PCT No.: PCT/JP00/02179 Int. Filing Date: 04 April 2000 Priority Date: 20 April 1999 Attorney's Docket No.: 213233US0PCT For: FLAVOR PRECURSOR COMPOSITION AND METHOD FOR RELEASING THE FLAVOR COMPONENT	DECISION ON PAPERS UNDER 37 C.F.R. 1.42

This decision is in response to applicants' filing of a declaration executed on behalf of deceased inventor Kyousuke Ishiguro by heirs of the estate on 10 October 2001. Applicants' submission is taken as an indication that joint inventor Kyousuke Ishiguro is deceased and is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 04 April 2000, applicants filed international application PCT/JP00/02179, which claimed a priority date of 20 April 1999 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 October 2000.

A Demand electing the United States was filed with the International Preliminary Examining Authority on 13 October 2000. The election was made prior to the expiration of the nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 22 October 2001 (20 October 2001 was a Saturday).

On 19 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, the fee for filing the declaration later than 30 months and an English translation of the international application.

On 10 October 2001, applicants submitted a declaration signed by three of the inventors and by four heirs of deceased inventor Kyousuke Ishiguro.

On 24 October 2001, prior to the matching of the 10 October 2001 submission with the application file, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors was required. This Notification set a two month extendable period for reply.

On 05 November 2001, applicants filed, "Response to Notification of Missing Requirements," stating that applicants had filed a declaration on 10 October 2001, supplying a copy of the postcard receipt and a copy of the declaration as filed.

DISCUSSION

A declaration for an international application must comply with 37 CFR 1.497(a)-(b), which requires in part that the oath or declaration must be made by all of the actual inventors except as provided for in §§ 1.42, 1.43 or 1.47. First, Second and Fourth joint inventors, Hidehiko Wakabayashi, Hirokazu Kawaguchi and Yoichi Ueda, respectively, signed the declaration providing their residences, citizenships and postal addresses. However, the information of Kyousuke Ishiguro is unsigned and followed by the information and signatures of four joint heirs of Kyousuke Ishiguro.

Under 37 CFR 1.42, in case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent. All of the heirs may make application for a patent on behalf of a deceased inventor as legal representative of the estate, provided a legal representative has not been appointed nor is one required to be appointed by applicable law. MPEP 409.01(d).

The declaration submitted on 10 October 2001 is not in compliance with 37 CFR 1.42, because though indicating that Minori Ishiguro, Tatsuya Ishiguro, Shouji Ishiguro and Youei Ishiguro are joint heirs, it does not indicate that they are all of the heirs of Kyousuke Ishiguro or that they are collectively the legal representative of the estate. That is, by merely indicating that the four heirs are joint heirs, it leaves open the possibility that there may be other heirs whose signatures would also be required on the declaration for the heirs to constitute the legal representative of the estate.

If the persons signing on behalf of the deceased inventor are all of the heirs or are the legal representative of the estate, this may be stated in the declaration. Alternatively, a statement may be filed either by the persons signing on behalf of the deceased inventor or by the applicants' attorney certifying that these persons are all of the heirs or that the signers are collectively the legal representative of the deceased inventor.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **REFUSED**.

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

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Telephone: (703) 305-0455
Facsimile: (703) 308-6459

MAR 1 2 2002

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Fourth Floor
1755 Jefferson Davis Hwy
Arlington, VA 22202

In re Application of WAKABAYASHI, Hidehiko, et al. Application No.: 09/926,180 PCT No.: PCT/JP00/02179 Int. Filing Date: 04 April 2000 Priority Date: 20 April 1999 Attorney's Docket No.: 213233US0PCT For: FLAVOR PRECURSOR COMPOSITION AND METHOD FOR RELEASING THE FLAVOR COMPONENT	DECISION ON PAPERS UNDER 37 C.F.R. 1.42

This decision is in response to applicants' "Renewed Submission Under 37 CFR 1.42," filed 25 February 2002.

BACKGROUND

On 04 April 2000, applicants filed international application PCT/JP00/02179, which claimed a priority date of 20 April 1999 and which designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 October 2000.

A Demand electing the United States was filed with the International Preliminary Examining Authority on 13 October 2000. The election was made prior to the expiration of the nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 22 October 2001 (20 October 2001 was a Saturday).

On 19 September 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, the fee for filing the declaration later than 30 months and an English translation of the international application.

On 10 October 2001, applicants submitted a declaration signed by three of the inventors and by four heirs of deceased inventor Kyousuke Ishiguro.

On 24 October 2001, prior to the matching of the 10 October 2001 submission with the application file, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors was required. This Notification set a two month extendable period for reply.

On 05 November 2001, applicants filed, "Response to Notification of Missing Requirements," stating that applicants had filed a declaration on 10 October 2001, supplying a copy of the postcard receipt and a copy of the declaration as filed.

On 03 January 2002, the Office mailed Decision On Papers Under 37 CFR 1.42, refusing the request for status under 37 CFR 1.42.

On 22 February 2002, applicants filed "Renewed Submission Under 37 CFR 1.42," accompanied by, *inter alia*, a translation of the family records and a statement by the heirs.

DISCUSSION

The declaration submitted on 10 October 2001 was not in compliance with 37 CFR 1.42, because though indicating that Minori Ishiguro, Tatsuya Ishiguro, Shouji Ishiguro and Youei Ishiguro were joint heirs, it did not indicate that they were all of the heirs of Kyousuke Ishiguro or that they were collectively the legal representative of the estate. Applicants were requested to certify that the heirs signing on behalf of the deceased inventor were all of the heirs.

The 22 February 2002 submission satisfies this requirement. This submission is construed as an indication that a legal representative has not been appointed nor is one required to be appointed by applicable law, and thus, the heirs are signing as the legal representative of the estate. See MPEP 409.01(d). If this interpretation is incorrect, applicants are required to promptly notify the Office of such and to submit a declaration properly executed by the legal representative of the deceased inventor in response to the decision.

CONCLUSION

For the above reasons, the request for status under 37 C.F.R. 1.42 is **GRANTED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt. The 35 U.S.C. §371(c) date is 10 October 2001..

Boris Milef
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mail Date: 04/20/2010

Applicant	: Hiroyuki Atarashi	: DECISION ON REQUEST FOR
Patent Number	: 7646747	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/926,193	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1204** 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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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of:
Fukuchi et al.
Serial No.: 09/926,256
Filed: October 2, 2001
Attorney Docket No.: 214595US0PCT

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition under 37 CFR. § 1.181(a) and MPEP 711.03(c) filed on September 24, requesting withdrawal of the holding of abandonment of the above-identified application based on non-receipt of an Office action and to restore the application to a pending status.

A review of the file history shows that the Office mailed a first Office action, setting a one-month statutory time period for reply, to applicants on November 26, 2003. On August 25, 2004 the examiner mailed a notice of abandonment for failure to respond to the outstanding Office action.

Applicants state that the Office action of November 26, 2003 was never received and provides as evidence thereof a copy of the attorney docket report where the Office action would have been entered if received, showing non-receipt of the Office action. Based on the evidence presented, it is concluded that applicants never received the Office action. In view thereof, the Notice of Abandonment mailed August 25, 2004, is vacated and the application is restored to pending status with the mailing date of this decision.

Applicants' petition is **GRANTED**. The application will be forwarded to the examiner for prompt mailing of a new Office action.

Should there be any questions about this decision, please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile at 703-872-9306.

Marianne C. Seidel

Bruce Kisliuk
Director, Technology Center 1600

04 JUN 2002

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OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Crystal Square Five- Fourth Floor
1755 Jefferson Davis Highway

In re Application of Yuichi WATANABE Application No.: 09/926,281 PCT No.: PCT/JP01/00885 Int. Filing Date: 08 February 2001 Priority Date: 08 February 2000 Attorney's Docket No.: P1389 For: APPARATUS AND CIRCUIT FOR POWER SUPPLY, AND APPARATUS FOR CONTROLLING LARGE CURRENT LOAD	DECISION ON PETITION UNDER 37 CFR 1.181

This decision is in response to the "Petition Under 37 CFR 1.181 For Corrected Notice Of Acceptance," requesting a corrected Notification of Acceptance under 35 USC 371 because the date of receipt of 35 USC 371(c)(1), (c)(2), (c)(4) requirements is incorrect.

BACKGROUND

On 05 October 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), copy of the international application. Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

On 01 November 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 01 November 2001 date of mailing or by 22 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application. In addition, the surcharge for providing the oath or declaration later that the appropriate 20 or 30 months from the priority date (37 CFR 1.492(e))

On 12 December 2001, applicant filed a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS" which included a copy of the 23 October 2001 date-stamped filing postcard and a copy of the Declaration.

On 24 January 2002, the United States Designated/Elected Office mailed a Notification of Acceptance (Form PCT/DO/EO/903) indicating that the date of receipt of 35 USC 371(c)(1), (c)(2) and (c)(4) requirements is 12 December 2001.

On 07 February 2002, applicant filed the instant petition requesting a corrected notice of acceptance, which included a copy of the date-stamped postcard by the USPTO.

DISCUSSION

MPEP 503 provides:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard indicates that a Combined Declaration, Petition & Power of Attorney was submitted on 23 October 2001. However, it is unclear from the record if the copy of the Declaration submitted on 12 December 2001 was a true copy of the Declaration submitted on 23 October 2001.

Accordingly, since it is unclear if the Declaration submitted on 12 December 2001 is a true copy of the Declaration filed on 23 October 2001, the 35 USC 371 date of 12 December 2001 is correct.

DECISION

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO(2) MONTH** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Consideration Under 37 CFR 1.181."

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Office

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6312

0 8 OCT 2002

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www.uspto.gov

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Crystal Square Five- Fourth Floor
1755 Jefferson Davis Highway
Arlington VA 22202

In re Application of	:	
Yuichi WATANABE	:	
Application No.: 09/926,281	:	
PCT No.: PCT/JP01/00885	:	DECISION
Int. Filing Date: 08 February 2001	:	
Priority Date: 08 February 2000	:	
Attorney's Docket No.: P1389	:	
For: APPARATUS AND CIRCUIT FOR POWER	:	
SUPPLY, AND APPARATUS FOR CONTROLLING	:	
LARGE CURRENT LOAD	:	

This decision is in response to the "Request for Corrected Official Filing Receipt" file on 22 May 2002 requesting that the filing date of the above application be corrected to October 23, 2001.

DISCUSSION

On 07 February 2002, applicant filed a petition under 37 CFR 1.181 requesting a corrected notice of acceptance, which included a copy of the date-stamped postcard by the USPTO.

On 22 May 2002, applicant filed a "Request for Corrected Official Filing Receipt."

In a decision from this Office on 04 June 2002 the petition of 07 February 2002 was dismissed. The petition indicated that it was unclear if the Declaration submitted on 12 December 2001 is a true copy of the Declaration filed on 23 October 2001, the 35 U.S.C. 371 date of 12 December 2001 is correct.

A proper response must be filed within the time period remaining from the 04 June 2002 decision.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Leonard E. Smith
PCT Legal Examiner
PCT Legal Office

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6312
Fax: (703) 308-6459

22 JUL 200

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OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Crystal Square Five- Fourth Floor
1755 Jefferson Davis Highway
Arlington VA 22202

In re Application of
Yuichi WATANABE
Application No.: 09/926,281
PCT No.: PCT/JP01/00885
Int. Filing Date: 08 February 2001
Priority Date: 08 February 2000
Attorney's Docket No.: P1389
For: APPARATUS AND CIRCUIT FOR POWER SUPPLY, AND APPARATUS FOR CONTROLLING LARGE CURRENT LOAD

DECISION ON

RENEWED PETITION

UNDER 37 CFR 1.181

This decision is in response to the "PETITION UNDER 37 CFR 1.181 FOR CORRECTED NOTICE OF ACCEPTANCE" requesting that the filing date of the above application be corrected to October 23, 2001, and to waive the extensions fees due to non-receipt of decision mailed on 04 June 2002.

BACKGROUND

In a decision dated 08 October 2002 from this office, the "Petition for Corrected Official Filing Receipt" filed on 22 May 2002 was reviewed. The decision stated that if was unclear if the Declaration submitted on 12 December 2001 was a true copy of the Declaration filed on 23 October 2001, and a proper response must be filed within the time period remaining from the 04 June 2002 decision.

On 04 November 2002, the present petition was submitted requesting that the filing date of the above application be corrected to October 23, 2001, and to waive the extension fees due to non-receipt of the decision mailed on 04 June 2002.

DISCUSSION

REQUEST TO CORRECT OFFICIAL FILING RECEIPT:

This petition is to correct the "filing date" appearing in the filing date box of the filing receipt of the above application that was purported to have been filed on October 23, 2001. Applicants filed the above papers, accompanied by a copy of the original postcard which was sent with the Declaration.

The postcard lists the items submitted on 23 October 2001, and it indicates that, inter alia, a Declaration was submitted to the U.S. Patent Office on such date.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped by the PTO.

Applicant's postcard is accepted as *prima facie* that, inter alia, that the Declaration was submitted to the U.S. Patent Office on such date.

WAIVE EXTENSIONS FEES DUE TO NON-RECEIPT OF SAID DECISION:

Applicants also filed a separate petition to waive the extensions fees due to non-receipt of an Office decision, accompanied with a photocopy of the docket record from August 2 – August 5, where the date for the response to the decision of this Office mailed on 04 June 2002 would have been docketed for mailing.

A review of the August 2 – August 5 docket reports indicating all replies docketed for a date of two months from the 04 June 2002 mail date shows that the decision was not received by applicant's representative.

Accordingly, this showing overcomes the presumption that applicant did receive the decision mailed on 04 June 2002, and the extension fees to the reply of 04 June 2002 is waived.

DECISION

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

The Notification of Acceptance of Application mailed on 24 January 2002 is **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision that is, for issuance of a corrected Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C.§ 371 date of **23 October 2001**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Affairs
Work (703) 308-6312
Fax (703) 308-6459

Leonard Smith
PCT Legal Examiner
PCT Legal Affairs

21 JUN 2002

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

Dennison, Schultz & Dougherty
612 Crystal Square 4
1745 Jefferson Davis Hwy
Arlington, VA 22202-3417

In re Application of	:	
GRANGER, Jacques, et al.	:	
Application No.: 09/926,290	:	DECISION ON
PCT No.: PCT/FR00/00992	:	
Int. Filing Date: 17 April 2000	:	PETITION
Priority Date: 20 April 1999	:	
Attorney Docket No.: 01183	:	UNDER 37 CFR 1.181
For: COMPOSITE SEALING CAP	:	

This decision is in response to applicants' "Request To Withdraw Holding of Abandonment," filed on 08 May 2002. No petition fee is due.

BACKGROUND

On 17 April 2000, applicants filed international application PCT/FR00/00992. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 October 2000. A demand for international preliminary examination was filed 07 September 2000, prior to the expiration of nineteen months from the priority date. The deadline for entry into the national stage in the United States was thirty months from the priority date, 22 October 2001 (20 October 2001 was a Saturday).

On 09 October 2001, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, *inter alia*, the basic national fee.

On 15 November 2001, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required.

On 29 April 2002, the Office mailed a Notification of Abandonment indicating that the application went abandoned for failure to respond to the Notification of Missing Requirements mailed 15 October 2001.

On 08 May 2002, applicants filed the instant petition under 37 CFR 1.181, accompanied by, *inter alia*, two postcard receipts and a declaration.

DISCUSSION

MPEP at section 503 states, in part:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

The 30 October 2001 postcard receipt lists, *inter alia*, the declaration. The postcard receipt is date stamped and indicates the applicants, the serial number and the title of the application. The postcard receipt is not annotated to indicate the declaration was not received.

The postcard receipt is adequate evidence the declaration was received on 30 October 2001.

The petition states that the letter and declaration are copies of those submitted on 30 October 2001 and the statement is signed by someone registered to practice before the office.

A review of the declaration reveals that it is in compliance with 37 CFR 1.497(a)-(b) and that applicants have satisfied the requirements under 35 U.S.C. §371.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The Notification of Abandonment mailed 29 April 2002 is hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accordance with this decision. The 35 U.S.C. §371(c) date is 30 October 2001.

Richard Cole
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

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P.O. Box 1450
Alexandria, VA 22313-1450
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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

In re Application of
Rasmussen
Application No. 09/926,310
Filed October 11, 2001
Attorney Docket No.: 3330
For: FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL-LIKE STRUCTURE BY COEXTRUSION OF SEVERAL COMPONENTS, AND METHOD AND APPARATUS FOR MANUFACTURING SUCH FOOD PRODUCT

ON PETITION

COPY MAILED

SEP 17 2004

OFFICE OF PETITIONS

In re Application of
Rasmussen
Application No. 10/787,214
Deposited: February 27, 2004
Attorney Docket No. RASMUS 9.0-001
For: FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL-LIKE STRUCTURE BY COEXTRUSION OF SEVERAL COMPONENTS, AND METHOD AND APPARATUS FOR MANUFACTURING SUCH FOOD PRODUCT

This is a decision on (1) the petition requesting that application no 10/787,214 be accorded a filing date of February 27, 2004 as a CPA of application no. 09/926,310 and (2) the petition requesting that application no. 09/926,310 be revived under 37 CFR 1.137(a) so that a CPA could be filed. Both petitions were filed on July 30, 2004 (certificate of mailing date July 26, 2004).

The petition, treated under 37 CFR 1.53(e), to accord application no. 10/787,214 a filing date of February 27, 2004 as a CPA of application no. 09/926,310 is **DISMISSED**.

The petition under 37 CFR 1.137(a) to revive application no. 09/926,310 so that a CPA could be filed is **DISMISSED**.

Petitioner is given TWO MONTHS FROM THE DATE OF THIS DECISION within which to request reconsideration. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

A Notice of Allowance and Fee(s) Due was mailed in application no. 09/926,310 on December 1, 2003. Petitioner filed a 312 amendment on February 12, 2004.

Application no. 10/787,214 was deposited on February 27, 2004 without a specification. Accordingly, on May 24, 2004, the Office mailed a Notice of Incomplete Nonprovisional Application, stating that the application had not been accorded a filing date and that the filing date will be the date of receipt of the specification.

The instant petitions were filed on July 30, 2004.

PETITION UNDER 37 CFR 1.53(E) IN APPLICATION NO. 10/787,214

Petitioner explains that the former attorney of record, William J. Daniel, intended to file a CPA of application no. 09/926,310 on February 27, 2004, but used an out of date transmittal form intended for use in filing an application under 37 CFR 1.53(b). Mr. Daniel modified the 1.53(b) form and requested that the Office utilize the file wrapper and contents of prior application no. 09/926,310 and abandon application no. 09/926,310 as of the filing date of the present application. However, Mr. Daniel did not type the word "CPA" anywhere on the form. It is noted that the Preliminary Amendment referred to the application as a "new CONTINUATION application." The Office properly processed the application as a 37 CFR 1.53(b) application.

Even if the papers filed on February 27, 2004 were considered a CPA, petitioner is informed that effective July 13, 2003, CPA practice was eliminated as to utility and plant applications. *See Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, Final Rule, 68 *Fed. Reg.* 32376 (May 30, 2003). Any request for a CPA filed on or after July 14, 2003 in a utility or plant application is improper, regardless of the filing date of the utility of plant application in which the CPA is filed. MPEP 201.06(d).

In short, applicant can not file a CPA. The petition under 37 CFR 1.53(e) is dismissed.

PETITION UNDER 37 CFR 1.137(a) IN APPLICATION NO. 09/926,310

A copy of the petition filed in application no. 10/787,214 will be placed in the file of application no. 09/926,310 to complete the record of application no. 09/926,310. Without it, the 137(a) petition is incomplete.

Petitioners request revival of parent application no. 09/926,310 in order to retain copendency between it and child application no. 10/787,214. This is possible.

Application no. 09/926,310 became abandoned for failure to timely pay the issue fee within three (3) months of the mailing of the December 1, 2003 Notice of Allowance and Fee(s) Due. Accordingly, this application became abandoned on March 2, 2004. The filing of the instant revival petition precedes the mailing of A Notice of Abandonment.

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 lacks item (3).

Regarding (3) above, petitioners have not shown to the satisfaction of the Commissioner that the entire delay from the due date of the reply to the filing of a grantable petition was

unavoidable.

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to have been "unavoidable". 35 USC § 133. Decisions on reviving abandoned applications 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.

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). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition to revive an application as unavoidably abandoned cannot be granted where a 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).

The showing of record is inadequate to establish unavoidable delay within the meaning of 37 CFR 1.137(a). Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

Petitioner knew that the issue fee was due on March 1, 2004. Petitioner did not pay the issue fee. Petitioner attempted to file a CPA when that it was not possible. Therefore, a proper reply was not filed in a timely manner. A delay resulting from the lack of knowledge or improper application of the patent statute, rules of practice or the MPEP does not constitute an "unavoidable" delay. See Haines v. Quigg, 673 F. Supp. 314, 317, 5 USPQ2d 1130, 1132 (N.D. Ind. 1987), Vincent v. Mossinghoff, 230 USPQ 621, 624 (D.D.C. 1985); Smith v. Diamond, 209 USPQ 1091 (D.D.C. 1981); Potter v. Dann, 201 USPQ 574 (D.D.C. 1978); Ex parte Murray, 1891 Dec. Comm'r Pat. 130, 131 (1891).

The petition under 37 CFR 1.137(a) is dismissed.

RECOMMENDED ACTION

Petitioner should provide a copy of the parent application **in application no. 10/787,214** in response to the May 24, 2004 Notice of Incomplete Nonprovisional Application, along with

an explanation as to why petitioner was delayed in responding to the Notice. The application will be accorded a filing date as of the date of receipt of the specification, claims, and drawings.

Then petitioner should file a petition to revive under 37 CFR 1.137(b) **in application no. 09/926,310.** As long as application no. 10/787,214 is deemed complete and has a filing date before application no. 09/926, 310 patents, the two applications will have copendency.

Further correspondence with respect to these petitions should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450
ATTN: E. Shirene Willis

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202
ATTN: E. Shirene Willis

By FAX: (703) 872-9306
ATTN: Office of Petitions – E. Shirene Willis

Application no. 10/787,214 will be returned to the Office of Initial Patent Examination to await receipt of the specification, claims, and drawings from the parent application and an explanation as to why petitioner was delayed in responding to the May 24, 2004 Notice.

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

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD NJ 07090

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OFFICE OF PETITIONS

In re Application of :
Rassmussen :
Application No. 09/926,310 :
Filed: October 11, 2001 :
Attorney Docket No. RASMUS 3.3-001 :
For: FOOD PRODUCT WHICH ARTIFICIALLY HAS BEEN GIVEN A CELL-LIKE STRUCTURE BY COEXTRUSION OF SEVERAL COMPONENTS, AND METHOD AND APPARATUS FOR MANUFACTURING SUCH FOOD PRODUCT

DECISION
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 28, 2004, to revive the above-identified application.

This application became abandoned for failure to timely pay the issue fee and return the PTOL-85B within three (3) months of the mailing of the December 1, 2003 Notice of Allowance and Fee(s) Due. Accordingly, this application became abandoned on March 2, 2004. The filing of the instant petition precedes the mailing of a Notice of Abandonment.

Applicant has submitted a reply in the form of the issue fee and a completed PTOL-85B, an acceptable statement of the unintentional nature of the delay in responding to the December 1, 2003 Notice of Allowance and Fee(s) Due, and the petition fee.

The petition is **granted**.

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

Telephone inquiries concerning this matter 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
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P.O. Box 1450
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ARENT FOX PLLC
1050 CONNECTICUT AVENUE, N.W.
SUITE 400
WASHINGTON DC 20036

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SEP 28 2005

OFFICE OF PETITIONS

In re Application of :
Piero Del Soldato :
Patent No. 6,869,974 :
Application Number: 09/926,326 :
Issue Date : March 22, 2005 : DECISION ON PETITION
Filing Date: October 15, 2001 :
Attorney Docket Number: 108907-00020 :

This is a decision on the petition for certificate of correction under 37 CFR 1.183 filed on April 19, 2005. The petition is properly treated under 37 CFR 3.81 (b) to correct the assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request 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 not permitted. The reconsideration request should include a cover letter entitled "Renewed Petition". This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Effective June 25, 2004, when a request to issue a patent to an assignee is filed after payment of the issue fee, a certificate of correction must be submitted as there is no time to process these request before a patent is issued. See 69 Fed. Reg. 29865 (May 26, 2004).

Any request for issuance of an application in the name of the assignee submitted after the date of the payment of the issue fee, and any request that a patent be corrected to state the name of assignee must :

(A) state the assignment was submitted for recordation as set forth in 37 CFR §3.11 before issuance of the patent;

(B) provide a request for a certificate of correction §1.323;

(C) provide the fee set forth in 37 CFR §1.20 (a) and

(D) provide the processing fee set forth in 37 CFR §1.17(I)

Petitioner has failed to establish (A). Petitioner request that "Antipolis (FR)" be substituted for "Paris (FR)" . However, the location of the assignee on the patent agrees with the Office PALM computer database assignment records at the time of the issuance of the patent. Unless petitioner can establish the assignee's location was improperly recorded due to Office mistake, a correction of the assignee's location is not in order.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#4

Marvin J. Spivak
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
Fourth Floor
1755 S. Jefferson Davis Highway
Arlington, VA 22202

In re Application of	:	
FUKADA, Hiroyuki	:	
Application No.: 09/926,335	:	
PCT No.: PCT/JP01/00845	:	
Int. Filing Date: 07 February 2001	:	**DECISION**
Priority Date: 14 February 2000	:	
Attorney's Docket No.: 214935US2PCT	:	
For: FADING PITCH DETECTION	:	
APPARATUS AND METHOD . . .	:	

This decision is in response to applicant's "Response to Notification of Missing Requirements" filed on 08 January 2002 which is treated as a petition under 37 CFR 1.181. No fee is required.

BACKGROUND

On 23 October 2001, applicant purportedly filed documents in the above-captioned application which included an executed declaration.

On 11 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a declaration in compliance with 37 CFR 1.497(a) & (b) must be provided. A two-month time period for response was set.

On 08 January 2002, applicant filed the instant petition which was accompanied by, *inter alia*, a copy of the executed declaration purportedly filed 23 October 2001 and a copy of a stamped postcard receipt for the 23 October 2001 documents.

DISCUSSION

MPEP § 503 lists procedures to ensure receipt of any paper filed in the USPTO. Applicant must enclose a self-addressed postcard identifying all of the papers filed. The USPTO will stamp the receipt date on the card and place it on the outgoing mail. The identifying data on the card must clearly identify the paper for which receipt is requested. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

In this case, applicant has provided a copy of the date-stamped filing receipt for documents submitted 23 October 2001. The filing receipt records that a "Combined Declaration" was among the documents received in the USPTO. The filing receipt is stamped "98 Rec'd PCT/PTO 23 OCT 2001" across its face. The name of the applicant, attorney docket number, application number, and title are all clearly listed on the postcard receipt.

Accordingly, applicants have provided *prima facie* evidence that the declaration and other documents listed above were received by the USPTO on 23 October 2001.

Applicant included a copy of the executed declaration signed by the sole inventor in the above-captioned application which complies with 37 CFR 1.497(a) and (b).

DECISION

For the reasons above, applicants' petition under 37 CFR 1.181 is **GRANTED**.

The Form PCT/DO/EO/905 mailed 11 December 2001 is hereby **VACATED**.

Applicant has completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 07 February 2001, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of **23 October 2001.**

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.

James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457

19 JUN 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Richard E. Fichter
Bacon & Thomas
625 Slaters Lane, Fourth Floor
Alexandria, VA 22314

In re Application of STRANDBERG, Annica et al. Application No.: 09/926,340 PCT No.: PCT/SE00/00715 Int. Filing Date: 14 April 2000 Priority Date: 16 April 1999 Attorney Docket No.: STRA 3004/REF For: FLUFF PULP FOR ABSORPTION PRODUCTS	DECISION ON PETITION UNDER 37 CFR 1.181

This decision is in response to "Petition Under 37 C.F.R. 1.181(a) Requesting Withdrawal of the Holding of Abandonment," submitted to the United States Patent and Trademark Office on 09 December 2002.

BACKGROUND

On 14 April 2000, applicants filed international application PCT/SE00/00715. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 09 November 2000. On 01 November 2000, applicant filed a Demand for international preliminary examination, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty month period for paying the basic national fee in the United States expired on 16 October 2001.

On 16 October 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 09 November 2001, the Office mailed Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required.

On 13 November 2002, the Office mailed Notification of Abandonment (Form PCT/DO/EO/909) indicating that the above-identified application was abandoned for failure to respond to the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 09 November 2001.

On 09 December 2002, applicants submitted "Petition Under 37 C.F.R. 1.181(a)".

On 08 May 2003, applicants submitted a status inquiry letter.

On 13 May 2003, the Office replied to the status inquiry letter.

DISCUSSION

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

Items (1), (2) and (3) have been met. Practitioner states that the Office action was not received by the practitioner and that he has searched the file and docket records and they indicate that the office action was not received. A copy of the records where the non-received office action would have been docketed has been provided.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **GRANTED**.

The Notification of Missing Requirements (Form PCT/DO/EO/905) mailed 19 November 2001 is **VACATED**.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 13 November 2001 is **VACATED**.

This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing, including mailing of a Notification of Missing Requirements indicating that the an oath or declaration and the surcharge for late filing of the oath or declaration are required.

Boris Milef
PCT Legal Examiner
PCT Legal Administration

Erin M. Pender
Attorney Advisor
PCT Legal Administration

Telephone: 703-305-0455
Facsimile: 703-308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE
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WASHINGTON, D.C. 20231
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Bruce H. Bernstein
Greenblum & Bernstein PLC
1941 Roland Clarke Place
Reston, VA 20191

In re Application of	:	
Nishikawa et al.	:	
Application No.: 09/926,355	:	
Int. Appl. No.: PCT/JP00/02573	:	
Int. Filing Date: 20 April 2000	:	DECISION
Priority Date: 20 April 1999	:	
Attorney Docket No.: P21587	:	
For: Tricyclic Compound	:	

This is a decision on applicant's "Petition Under 37 C.F.R. § 1.182 Concerning Inventor Name Change filed on 29 May 2002.

A review of the application file reveals that the name of the eighth inventor listed in the international application was "TAKEI, Naomi" while the name is listed in the declaration as "Naomi Masuda." The instant petition asserts that this inventor's name was changed due to marriage. The petition is supported by a "Declaration Of Naomi Masuda Concerning Name Change which explains the circumstances surrounding the alleged name change and which is signed by the inventor. This petition is satisfactory under the practice explained in Section 605.04(c) of the Manual of Patent Examining Procedure. Thus, it would be appropriate to accept the name and signature of Naomi Masuda on the declaration.

DECISION

For the above reasons, the petition is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for further processing. The date of this application under 35 U.S.C. 371 is **19 February 2002**.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

UNITED STATES PATENT AND TRADEMARK OFFICE
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WASHINGTON, D.C. 20231
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Bruce H. Bernstein
Greenblum & Bernstein PLC
1941 Roland Clarke Place
Reston, VA 20191

In re Application of	:	
Nishikawa et al.	:	
Application No.: 09/926,355	:	
Int. Appl. No.: PCT/JP00/02573	:	
Int. Filing Date: 20 April 2000	:	DECISION
Priority Date: 20 April 1999	:	
Attorney Docket No.: P21587	:	
For: Tricyclic Compound	:	

This is a decision on applicant's response filed on 19 February 2002.

BACKGROUND

This international application was filed on 20 April 2000 and claimed an earlier priority date of 20 April 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 26 October 2000. A Demand electing the United States was filed on 20 April 2000, which was prior to the elapse of 19 months from the priority date. Consequently, the thirty period for payment of the basic national fee in the United States expired as of midnight on 20 October 2001.

On 19 October 2001, applicants filed a Transmittal Letter accompanied by, *inter alia*, the basic national fee and an unexecuted declaration of the inventors.

On 28 November 2001, a Notification of Missing Requirements was mailed to applicants, requiring the filing of an executed oath or declaration and a surcharge under 37 CFR 1.492(e).

Applicants filed the instant response on 19 February 2002.

DISCUSSION

The response filed on 19 February 2002 included a signed declaration. However, the declaration named on inventor whose name (Naomi Masuda) differed from the name appearing in the published international application (Naomi Takei). The "Cover Letter" filed on 19 October 2001 suggests that this discrepancy is "due to marriage." However, applicants have not filed a petition and petition fee as described in MPEP 605.04(c), including an appropriate affidavit or court order. Thus, the declaration is not acceptable.

DECISION

For the reasons explained *supra*, the declaration filed on 19 February 2002 is not acceptable.

If reconsideration on the merits of this decision is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Leonard Smith
PCT Legal Examiner
PCT Legal Office

George Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 08/01/2005

TO SPE OF : ART UNIT ~~1653~~ 1654

SUBJECT : Request for Certificate of Correction on Patent No.: 09/926385 6884868

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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

- ☑ **Approved** — **All** changes apply. DL 8/8/05
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments:

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

Bruce Campell — **SPE**

1654 — **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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GOWLING LAFLEUR HENDERSON LLP
SUITE 1600, 1 FIRST CANADIAN PLACE
100 KING STREET WEST
TORONTO ON M5X 1G5 CA CANADA

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OFFICE OF PETITIONS

In re Application of	:	
Spicer et al.	:	
Application No. 09/926,436	:	ON PETITION
Filed: January 18, 2002	:	
Attorney Docket No. T8466295US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 25, 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 a Request for Continued Examination (RCE) with requisite fee 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.

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) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

In re Application of Yamagiwa Application No. 09/926,485 International Filing Date: April 18, 2000 For: TIRE CONTAINING SEALING AGENT	Corrected Letter Regarding Patent Term Extension

The above-identified application has been forwarded to the undersigned for correction of the patent term extension information printed on the Notice of Allowance and Issue Fee due that was mailed on October 19, 2005, which incorrectly states the patent term is extended by 241 days. See 35 U.S.C. §§ 154(a)(2) and (b)(1)[1] and 37 C.F.R. § 1.701(a).

Issue of the above-identified application was delayed due to appellate review by the Board of Appeals and Interferences, and the above-identified application has been allowed after a decision of the Board reversing an adverse determination of patentability.

A Notice of Appeal was filed in the above-identified application on September 27, 2004. On September 22, 2005, the Board of Appeals and Interferences reversed the decision of the examiner in the above-identified application. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an extension of the patent term. The period of delay in the above-identified application is the period beginning on September 27, 2004, the date that the Notice of Appeal was filed, and ending on September 22, 2005, the date of the final decision in favor of the applicant. Three years after the international filing date of the application is April 18, 2003. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of

[1] 35 U.S.C. § 154 was amended by the "American Inventors Protection Act of 1999," which was enacted on November 29, 1999 as part of Public Law 106-113 (Consolidated Appropriations Act for Fiscal Year 2000). Since this amendment is effective May 29, 2000 and applies to applications filed on or after that date, the prior patent term adjustment provisions of 35 U.S.C. § 154 continue to apply to the above-identified application.

extension is **361 days**, Not 241 days, as printed on the Notice of Allowance, which is the period from September 27 2004 to September 22, 2005, including the beginning and end dates.

After mailing of this decision, the above-identified application will be forwarded to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by **361 days**.

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

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

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

Telephone inquiries with regard to this communication should be directed to the undersigned at (571) 272-7709.

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

UNITED STATES PATENT and TRADEMARK OFFICE

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18 JAN 2007

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

In re Application of	:	DECISION ON
Guillaume LAFFONT, et al	:	
Application No.: 09/926,511	:	
PCT No.: PCT/IB01/01814	:	
Int. Filing Date: 02 October 2001	:	PETITION
Priority Date: 29 September 2000	:	
Attorney's Docket No.: 215653US2PCT	:	
For: REFRACTOMETER WITH BLAZED	:	
BRAGG GRATINGS	:	UNDER 37 CFR 1.181

This decision is in response to the "REQUEST TO CORRECT FILING DATE" filed on 17 August 2006, which is being treated as a petition under 37 CFR 1.181 requesting that the filing date of the above declaration was filed on 05 November 2002 so that the correct filing date is 05 November 2002.

BACKGROUND

On 13 November 2001, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a copy of the international application. Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed Declaration or Oath was provided with the transmittal letter.

On 13 September 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from the date of this Notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 17 August 2006 applicants submitted this petition indicating that the correct filing date of the application should be 05 November 2002 as evidenced by a copy of the USPTO date-stamped filing receipt.

DISCUSSION

Applicants' present the current petition and the postcard shows what was filed purportedly with the USPTO:

(1) Combined Declaration, Petition & Power of Attorney,
(2) Supplemental Application Data Sheet,
(3) Copy of Notification of Missing Requirements.

The postcard lists the above items as submitted on 05 November 2002, and it indicates that, inter alia, a declaration was submitted to the U.S. Patent Office on such date.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped by the PTO.

Applicant's postcard is accepted as *prima facie* that, inter alia, that the declaration was submitted to the U.S. Patent Office on 05 November 2002, and the correct filing date is 05 November 2002.

DECISION

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

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying the 35 U.S.C. §371(c)(1), (c)(2,) and (c)(4) date as **05 November 2002**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Administration
Tel: (571) 272-3276
Fax: (571) 273-0459

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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SYMBOL TECHNOLOGIES INC
LEGAL DEPARTMENT
ONE SYMBOL PLAZA
HOLTSVILLE, NY 11742

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MAY 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Goren et al.	:	
Application No. 09/926,516	:	ON PETITION
Filed: November 14, 2001	:	
Attorney Docket Number: 1061B	:	

This is a decision on the Petition for Revival of Abandoned Application under 37 CFR 1.137(b), filed March 2, 2006.

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, mailed September 27, 2005. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on December 28, 2005. The mailing of this Decision precedes the mailing of a Notice of Abandonment.

With the instant petition, Applicant has satisfied the requirements of a grantable petition under 37 CFR 1.137(a). The issue fee is filed with the instant petition. Accordingly, the petition is granted.

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

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

Derek L. Woods
Attorney
Office of Petitions

20 SEP 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slaters Lane - Fourth Floor
Alexandria, VA 22314

In re Application of KOLBECK Serial No.: 09/926,517 PCT No.: PCT/EP00/04781 Int. Filing Date: 25 May 2000 Priority Date: 27 May 1999 Atty Docket No.: KOL P3001/JEK For: METHOD AND DEVICE FOR SAVING AND RETRIEVING PIN CODES	DECISION ON PETITION UNDER 37 CFR 1.47(b)

This decision is in response to the applicant's "Petition Under 37 C.F.R. § 1.47(b) and 1.497(b)" filed 12 July 2002 to accept the application without the signature of inventor Alexander KOLBECK.

BACKGROUND

On 25 May 2000, applicant filed international application PCT/EP00/04781 , which claimed priority of an earlier application filed 27 May 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 December 2000. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 27 November 2001.

On 14 November 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a translation of the International Application into English; a First Preliminary Amendment and two sheets of formal drawings. An executed oath or declaration of the inventor as required by 35 U.S.C. 371 (c)(4) was not filed.

On 12 December 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. In addition, applicant was notified of the need to provide a surcharge of $130.00 for filing the oath or declaration later than the appropriate 20 or 30 months from the earliest priority date. (37 CFR 1.492(e). Applicant was given two months to respond and advised

that this time period could be extended with a proper petition and payment of fees.

On 12 July 2002, applicant responded with the present petition accompanied by a petition for a five-month extension of time and a check in the amount of $2,220.00 ($1,960.00 as payment of the five month extension fee, $130.00 as payment of the surcharge for providing an executed oath or declaration of the inventor later than thirty months from the earliest claimed priority date and $130.00 as payment of the fee for the present petition).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(I); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant has satisfied items (1), (3), and (6).

As to item (2), as stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature." Applicant has not provided evidence from an individual with first-hand knowledge that inventor Kolbeck has been presented with a complete set of application papers and subsequently refused to execute the oath or declaration.

Regarding item (4), the enclosed declaration and explanation of applicant is insufficient. The declaration is not in compliance with 37 CFR 1.497 (a) and (b). While counsel has provided the names and titles of the individuals executing the declaration, the signature box of the declaration for the purported assignee, Giesecke & Devrient, GmbH, does not identify the names and positions of said individuals executing the declaration on behalf of the corporate entity.

As to item (5), applicant has failed to show proof of proprietary interest in the application. Section 409.03(f) details the procedures for providing proof of proprietary interest when proceeding under 37 CFR 1.47(b):

> When an application is deposited pursuant to 37 CFR 1.47(b), the 37 CFR 1.47(b) applicant must prove that
> (A) the invention has been assigned to the applicant, or
> (B) the inventor has agreed in writing to assign the invention to the applicant, or
> (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.

If the application has been assigned, a copy of the assignment (in the English language) must be submitted. The assignment must clearly indicate that the invention described in the 37 CFR 1.47(b) application was assigned to the 37 CFR 1.47(b) applicant. A statement under 37 CFR 3.73(b) by the assignee must also be submitted (see MPEP § 324). An assignment of an application and any "reissue, division, or continuation of said application" does not itself establish an assignment of a continuation-in-part application. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956). An assignment to a 37 CFR 1.47(b) applicant for the sole purpose of obtaining a filing date for a 37 CFR 1.47(b) application is not considered an assignment within the meaning of 35 U.S.C. 118 and 37 CFR 1.47(b).

When an inventor has agreed in writing to assign an invention described in an application deposited pursuant to 37 CFR 1.47(b), a copy of that agreement should be submitted. If an agreement to assign is dependent on certain specified conditions being met, it must be established by a statement of facts by someone with first hand knowledge of the circumstances in which those conditions have been met. A typical agreement to assign is an employment agreement where an employee (nonsigning inventor) agrees to assign to his or her employer (37 CFR 1.47(b) applicant) all inventions made during employment.

When such an agreement is relied on, it must be established by a statement of a person having firsthand knowledge of the facts that the invention was made by the employee while employed by the 37 CFR 1.47(b) applicant.

If the invention has not been assigned, or if there is no written agreement to assign, the 37 CFR 1.47(b) applicant must demonstrate that he or she otherwise has a sufficient proprietary interest in the matter.

A proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state, or foreign) would by the weight of authority in that jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of same. The legal memorandum should be prepared and signed by an attorney at law familiar with the law of the jurisdiction involved. A copy (in the English language) of a statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patents Quarterly) relied on to demonstrate a proprietary interest should be made of record.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.

Leonard Smith
Legal Examiner
PCT Legal Office

Derek A. Putonen
Petitions Attorney
PCT Legal Office
Tel: (703) 305-0130
Fax: (703) 308-6459

19 JUN 2003

#2

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www.uspto.gov

J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slaters Lane - Fourth Floor
Alexandria, VA 22314

In re Application of KOLBECK Serial No.: 09/926,517 PCT No.: PCT/EP00/04781 Int. Filing Date: 25 May 2000 Priority Date: 27 May 1999 Atty Docket No.: KOL P3001/JEK For: METHOD AND DEVICE FOR SAVING AND RETRIEVING PIN CODES	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(b)

This decision is in response to the applicant's "Renewed Petition Under 37 C.F.R. § 1.47(b)" filed in the United States Patent and Trademark Office (USPTO) on 03 April 2003 to accept the application without the signature of inventor Alexander KOLBECK.

BACKGROUND

On 20 September 2002, applicant was mailed a decision dismissing applicant's petition under 37 CFR 1.47(b) to accept the present application without the signature of inventor Alexander KOLBECK. Applicant was afforded two months to file any request for reconsideration and advised that this period could be extended with a proper petition and payment of the appropriate extension of time fee.

On 03 April 2003, applicant filed the present renewed petition under 37 CFR 1.47(b) accompanied by a petition for a four-month extension of time and a check in the amount of 1450.00 as payment of the four-month extension of time. Applicant is advised that a four-month extension of time would result in a due date of 20 March 2003. As such, $520.00 will be deducted from Deposit Account No.: 02-200 and the extension of time petition will be considered as a petition for a **five**-month extension of time. With the additional payment, applicant's petition is considered timely filed.

DISCUSSION

As detailed in the decision mailed 20 September 2002, a petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(I); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a

Declaration of Jochen H¨hf ld

U.S. Patent Application No. 09/926,517

1. My name is Jochen Höhfeld, I am a German citizen and qualified as a German and European patent attorney engaged in the practice of intellectual property law in the firm Patentanwälte Klunker, Schmitt-Nilson, Hirsch located in Munich, Germany, of which firm I am a partner.

2. I represent the assignee of record of U.S. Patent Application Serial No. 09/926,517 in Germany, namely Giesecke and Devrient GmbH of Munich, Germany (which I may refer to as the "Company" below), and I am familiar with this application, including the fact that a Mr. Alexander Kolbeck of Weilheim, Germany was named as inventor in the application but thus far has refused to sign the declaration for the application or a formal assignment of same.

3. I have reviewed the Declarations of Messrs. Harms and Branzka and Ms. Teichmann as well as documents confirming Mr. Kolbeck's former employment by the company, all of the documents reflecting Mr. Kolbeck's refusal to execute the declaration and assignment for the U.S. application and attempts that were made by these individuals to obtain such signature.

4. It is my opinion based on my knowledge of employee and employer rights respecting inventions made during employment that the Company is legally the owner of all rights to the invention disclosed and claimed in U.S. Application No. 09/926,517 and that a German court, if presented with the issue of ownership of the invention, would rule in favor of the Company. My opinion is based on the facts stated in Mr. Harms' declaration and my personal review of the documents appended as Exhibits 4, 5, 6, 7 and 8 to the Harms declaration. From

thes documents, I have conclud d that the inventor and the Company fulfilled conditions and mutual obligations necessary to establish ownership in the invention by the Company under the German Act On Employee Inventions, and thus I fully agree with Mr. Harms' assessment of the Company's position respecting such ownership.

5. My opinion is specifically based on the provisions of the German Act On Employee Inventions and the information I have reviewed regarding Mr. Kolbeck's employment when the invention (socalled "service invention") was made. Specifically, in accordance with Sect. 5(1) of the Act:

> Any employee making a service invention shall be under a duty to report the invention to his employer immediately in a special written notice indicating that said writing constitutes the report of an invention. [...] The employer shall inform his employee without delay and in writing of the date the report was received.

After receiving such report, the employer may claim ownership of the invention within four months, per Sect. 6 of the Act:

> (1) An employer may claim a service invention by means of an unlimited or a limited claim.
>
> (2) Such claim shall be made in a written statement addressed to the employee. This shall be made as soon as possible, and no later then 4 months from the receipt of the proper report...

If the employer fails to comply with this four months term, the right to the invention will in general remain with the employee. The effect of claiming an employee's invention, i.e. a service invention, by the employer is defined in Sect. 7 of the Act:

(1) On the receipt of a written d claration of an unlimited claim, all rights in service and p nsion should pass to th employer.

(2) [...]

(3) Dispositions of a service invention made by an employee before his employer has declared a claim, shall have no effect on his employer, insofar as the employer's rights are concerned.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

April 2, 2003
Date

Jochen Höhfeld

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statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant previously satisfied items (1), (3), and (6).

As to item (2), applicant has presently provided a declaration from Mr. Siegfried Harris avowing to the fact that inventor Kolbeck was provided with a complete set of the application papers on 11 November 2002 and to date no response has been received.

Regarding item (4), applicant has presently provided a declaration executed on behalf of the corporate entity and the non-signing inventor which details the titles of the executing parties and shows that they are employed in positions for which they can execute legal documents on behalf of the corporation.

As to item (5), applicant has provided a declaration from Jochen Hohfeld, an attorney familiar with German law in which he provides his opinion that a competent German court would find that the corporate entity, Giesecke and Devrient GmbH, has a legal right to the present invention. Mr. Hohfeld's declaration contains relevant excerpts from the German "Act on Employee Inventions."

A review of the present renewed petition and accompanying exhibits finds that applicant has now satisfied all six items detailed above and it is proper to grant applicant's renewed petition at this time. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have been satisfied.

CONCLUSION

Applicant's renewed petition under 37 CFR 1.47(b) is **GRANTED**.

As provided in 37 CFR 1.47(b), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(b) will be published in the Official Gazette.

This application will be given an international application filing date of 25 May 2000 and a date of **03 April 2003** under 35 U.S.C. 371.

This application is being returned to the DO/EO/US for processing in accordance with this decision, namely, the mailing of a NOTIFICATION OF ACCEPTANCE UNDER 35 U.S.C. 371 (Form PCT/DO/EO/903).

Richard Cole
Legal Examiner
Office of PCT Legal Administration

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (703) 305-0130
Fax: (703) 308-6459

19 JUN 2003

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

Mr. Alexander Kolbeck
Merowingerstrabe 12
D-82362 Weilheim
GERMANY

In re Application of
KOLBECK
Serial No.: 09/926,517
PCT No.: PCT/EP00/04781
Int. Filing Date: 25 May 2000
Priority Date: 27 May 1999
Atty Docket No.: KOL P3001/JEK
For: METHOD AND DEVICE FOR SAVING AND RETRIEVING PIN CODES

Dear Mr. Kolbeck:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(b) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternately, you may arrange to do any of the preceding through a registered patent agent or attorney 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 the appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Richard Cole
Legal Examiner
Office of PCT Legal Administration

Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration

J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slaters Lane - Fourth Floor
Alexandria, VA 22314
United States of America

#11

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16 JUN 2003

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JACOBSON HOLMAN PLLC
400 7th Street, N.W., Suite 600
Washington, DC 20004

In re Application of	:	DECISION ON
NORDAL et al	:	
Application No.: 09/926,531	:	
PCT No.: PCT/NO01/00113	:	PETITION UNDER
Int. Filing Date: 15 March 2000	:	
Priority Date: 15 March 2001	:	37 CFR 1.137(b)
Attorney's Docket No.: P67191US0	:	
For: VERTICAL ELECTRICAL	:	
INTERCONNECTIONS IN A STOCK	:	

This decision is in response to applicants' "Petition To Revive Under 37 CFR 1.137(b)," filed on 14 March 2003.

BACKGROUND

On 15 March 2000, this international application was filed, claiming an earliest priority date of 15 March 2001.

A Demand electing the United States was filed in this international application on 16 October 2001. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 15 September 2002. This international application became abandoned with respect to the United States at midnight on 15 September 2002 for failure to pay the required basic national fee. A copy of the intentional application was transmitted on 20 September 2001 to the USPTO from the International Bureau.

On 15 November 2001, applicant filed in the United States Patent and Trademark Office (PTO) a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, the U.S. basic national fee, the copy of the international application, and an executed declaration.

On 28 March 2002, the United States Patent and Trademark Office erroneous mailed the Notification of Acceptance (PCT/DO/EO/903) since the application was abandoned for failure to enter the national stage and pay the basic national fee by 15 September 2002.

On 14 March 2003, applicants filed the instant petition under 37 CFR 1.137(b), which was accompanied by the petition fee.

DISCUSSION

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. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application; (2) the petition fee as set forth in § 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 this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Petitioner has provided: (1) the proper reply by submitting the basic national filing fee, (2) the petition fee set forth in §1.17(m) and (3) the proper statement under 137(b)(3). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3), and (4) under 37 CFR 1.137(b).

DECISION

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

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing. The 35 USC 371 date of this application is **15 November 2001** as indicated on the PCT/DO/EO/903 mailed on 28 March 2002.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Best Available Copy

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-3-04

TO SPE OF : ART UNIT 2624

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/986547 Patent No.: 7194139

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

FOR IFW FILES: Should Claims 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 (CofC)
South Tower - 9A22
Palm Location 7580

Emma 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.

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

Comments: /A.B/ 1/06/2010

SUPERVISORY PATENT EXAMINER

2624
Art Unit

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

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON VA 20191

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OFFICE OF PETITIONS

In re Application of
Abiko
Application No. 09/926,600
International Filing Date: May 26, 2000
Attorney Docket No.: P21273.A08
For: CR-BASED ALLOY EXCELLENT IN BALANCE BETWEEN STRENGTH AND DUCTILITY AT HIGH TEMPERATURE

: Decision on Petition for Patent Term Extension

The above-identified application has been forwarded to the undersigned for consideration on the "Petition For Patent Term Extension Under 37 CFR 1.181 and MPEP 2720," which was received on July 27, 2005, requesting a patent term extension of 547 days. See 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701.

The petition under 37 CFR 1.181 is granted-in-part.

Petitioner notes that the Notice of Allowance dated May 27, 2005, in the above-identified application did not indicate a patent term extension. The above-identified application was filed on May 26, 2000, and a Notice of Appeal was filed on September 4, 2003. On October 7, 2004, the Board of Patent Appeals and Interferences (BPAI) affirmed-in-part the decision of the examiner and the request for rehearing was finally denied on March 3, 2005. Petitioner argues that the application is entitled to a 547-day patent term extension for the period from September 4, 2003 to March 3, 2005.

Issue of the above-identified application was delayed due to appellate proceedings before the Board of Patent Appeals and Interferences, and the above-identified application has been allowed pursuant to a favorable decision by the Board.

A Notice of Appeal was filed in the above-identified application on September 4, 2003. On September 29, 2004, the Board of Appeals and Interferences affirmed-in-part the decision of the examiner in the above-identified application. On November 29, 2004, Petitioner requested rehearing of the decision of the BPAI. On March 3, 2005, the BPAI denied the request for rehearing. Since the above-identified application was filed after June 7, 1995, there is no terminal disclaimer due to the issue of another patent claiming subject matter that is not patentably distinct from that under appellate review, and issuance of the application as a patent was delayed due to appellate review resulting in a reversal of an adverse decision of patentability, the patent to issue from the application is entitled to an

extension of the patent term. The period of delay in the above-identified application is the period beginning on September 4, 2003, the date that the Notice of Appeal was filed, and ending on September 29, 2004, the date of the final decision in favor of the applicant. Three years after the effective filing date of the application is May 26, 2000. Accordingly, the period of extension is not required to be reduced pursuant to 37 CFR 1.701(d)(1) by the amount of time prior to three years after the filing date of the application. As a result, the period of extension is 392 days, the period from September 4, 2003 to September 29, 2004, including the beginning and end dates.

With respect to Petitioner's argument that Petitioner should receive additional patent term extension because the decision of the BPAI was not final until the mailing of the decision on the rehearing on March 3, 2005. The decision on Rehearing was denied, thus it was not a favorable decision. 37 CFR 1.701(a)(3) provides patent term extension ending on the date of a final decision in favor of the applicant and the decision in favor of applicant was the decision by the BPAI on September 29, 2004. The decision on the request for rehearing was not in favor of applicant.

After mailing of this decision, the application will be forwarded to the Office of Publications for issuance of the patent. The patent, if issued, will include an indication that the patent term is extended by **392 days**.

Petitioner's deposit account has not been charged a petition fee.

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

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

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COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 10

Bradley D. Lytle
OBLON, SPIVAK, MCCLELAND,
MAIER & NEUSTADT, P.C.
Fourth Floor
1755 Jefferson Davis Highway
Arlington, Virginia 22202

NOV 22 2002

In re Application of	:	
LEIJON et al.	:	DECISION
Application No. 09/926,615	:	ON PETITION
Filed: November 26, 2001	:	
Attorney Docket No. 216273-US-6X PCT	:	

This is a decision on the petition, filed March 20, 2002 requesting that the prosecution in the above-identified patent application be suspended for a period of six months under 37 C.F.R. § 1.103(a), and an additional six months, pursuant to MPEP § 1002.02(c)9, for a total of twelve months, beginning with the filing of the subject Petition.

Regarding a suspension on request of the applicant, 37 CFR 1.103(a) provides:

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

In the Request, to establish cause, Petitioner asserts the claims and issues of the instant application are relevant to the claims and issues in at least U.S. Application No. 08/973,019 which Petitioner has appealed. Further, because the appeal of '019 will materially affect the prosecution of the instant application, the instant application should be suspended pending the decision on appeal of '019.

A review of the record indicates the instant application has claims and issues that are relevant to

appealed case '019 . The claims in the instant application and appealed case '019 are both directed toward the particular structure of the high voltage cable. Consequently, since the outcome of appealed case '019 will materially affect prosecution of the instant application, good and sufficient reasons have been demonstrated to warrant suspension of action.

Accordingly, the petition to suspend prosecution is GRANTED for a period of up to twelve (12) months starting from the filing of petition, March 20, 2002.

Inquiries regarding this decision should be directed to Richard Seidel at (703) 306-3431.

Richard Seidel, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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PATTERSON & SHERIDAN, L.L.P.
3040 POST OAK BOULEVARD, SUITE 1500
HOUSTON, TX 77056

COPY MAILED
DEC 2 4 2008

In re Patent No. 6,788,418	:	
Issued: September 7, 2004	:	
Application No. 09/926,727	:	NOTICE
Filed: January 23, 2002	:	
Atty Docket No. 01222	:	

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 patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989).** Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED.**

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

It is noted that fee deficiency was overpaid in the amount of $465. Accordingly, $465 is being refunded to counsel's deposit account.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Paper No. 17

MORTON CHIRNOMAS & ASSOC.
11355 W. OLYMPIC BLVD.
SUITE 100
LOS ANGELES, CA 90064

COPY MAILED

MAR 1 2 2004

OFFICE OF PETITIONS

In re Application of
Stern, Ran
Application No. 09/926,736
Filed: December 11, 2001
Attorney Docket No. C-17-60-4 PCTUS

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 24, 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 28, 2003. A two-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, this application became abandoned on December 29, 2003.

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 with the instant petition on February 24, 2004, is hereby not accepted. Petitioner failed to properly submit the Statement under 37 CFR 3.73(b). In this regard, the 3.73(b) does not include the reel and frame number showing the chain of title from the inventor(s), of the patent application above, to the current assignee. In order to request or take action in a patent or trademark matter, the assignee must establish its ownership of the patent or trademark property to the satisfaction of the Commissioner. Petitioner 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 may 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. Enclosed is a Statement under 37 CFR 3.73(b) form 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.

The file is now being forwarded to Technology Center 3700 for processing of the Request for

Continued Examination under 37 CFR 1.114 filed with the instant petition.

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

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

Enclosure: PTO/SB/96 - Statement under 37 CFR 3.73(b)

cc: Edward Langer
c/o Shiboleth, Yisraeli, Roberts, Zisman & Co.
350 Fifth Avenue, 60th Floor
New York, NY 10118

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

Paper No: 07192004

Thomas M. Cunningham / Norman F. Oblon
Oblon, Spivak, McClelland, Maier & Neustadt
1940 Duke Street
Alexandria, Virginia 22314

In re Application of: Colombo *et al.*
Application No.: 09926738
Filed: 11 Dec 2001

Attorney Docket No.: 217047US0PCT
For: Use Of Thiamphenicol And Derivatives Thereof For The Preparation Of Pharmaceutical Compositions Useful In The Treatment Of Chlamydia Pneumoniae Infections

DECISION ON PETITION TO CONSIDER INFORMATION DISCLOSURE STATEMENT

This is in response to applicant's petition filed 28 Jan 2004 under 37 C.F.R. 1.181 to consider the Information Disclosure Statement filed 06 Feb 2002. It is also noted that applicant filed a copy of the above indicated petition on 08 Mar 2004. In addition, it is also noted that on 16 Jun 2004 applicant refiled the petition and provided copies of the previous communications regarding the petition and information disclosure statement..

Applicant's petition is GRANTED.

Questions with regard to this letter should be directed to the undersigned as indicated below.

Christopher S. F. Low
Supervisory Patent Examiner
Art Unit 1614 (571) 272-0951
Christopher.low@uspto.gov

04 SEP 2002

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#7

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

In re Application of HOREA BACILA, ET AL. Application No.: 09/926,751 PCT No.: PCT/RO00/00008 Int. Filing Date: 13 April 2000 Priority Date: NA Attorney's Docket No. 215530US2PCT For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION	DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is in response to the "PETITION UNDER 37 CFR §1.47(a)" filed on 01 April 2002. Petitioner has submitted the requisite $130 petition fee by check.

BACKGROUND

On 13 April 2002, applicants filed international application PCT/RO00/00008, no priority was claimed. A DEMAND was filed on 08 November 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty (30) month time period for paying the basic national fee in the United States of America expires at midnight on 13 October 2002.

On 12 December 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the Transmittal Letter.

On 01 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 01 February 2002 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 01 April 2002, applicant filed the present petition accompanied, inter alia, by a declaration from Mr. Neil Riches.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (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 address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

> "Where inability to find or reach a nonsigning inventor 'after diligent effort' is the reason for filing under 37 CFR 1.47, an affidavit or declaration of the facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.
>
> The affidavit or declaration of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as certified mail return receipt, cover letter instructions, telegrams, etc. that support a finding that the nonsigning inventor could not be found or reached should be made a part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

The averments of Neil Riches are insufficient to support a finding that the nonsigning inventors, Mr. Mirela Boboc, Mr. Ovidiu Ban, and Mr. Mihai Spatar could not be found after diligent effort because Mr. Richard's declaration fails to show diligent effort to locate inventors Boboc, Ban and Spatar. Petitioner has provided no proof to collaborate that a complete application (specification, including claims, drawings, and oath or declaration) was sent to them at their last known addresses. The declaration only states that registered letters were sent once to each of the three individual inventors at their last known addresses, respectively. Although, petitioner has submitted copies of the mail return receipt that indicates that the letters were not able to be delivered it is unclear if they were not able to be delivered because the inventors were away during such time since the record only shows one attempt.

In addition, Mr. Riches has not shown that he has searched for the above non-signing inventors new address either by the internet or by telephone directory, which would show diligent effort by Mr. Riches to find inventors Boboc, Ban, and Spatar.

Application No.: 09/926,751

Consequently, at this time it can not be concluded that the nonsigning inventors Boboc, Ban, and Spatar could not be found after diligent effort

DECISION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Rafael Bacares
Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Leonard Smith
Legal Examiner
PCT Legal Office

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23 APR 2003

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

In re Application of HOREA BACILA, ET AL. Application No.: 09/926,751 PCT No.: PCT/RO00/00008 Int. Filing Date: 13 April 2000 Priority Date: NA Attorney's Docket No. 215530US2PCT For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

This is in response to the "REQUEST FOR RECONSIDERATION AND RENEWED PETITION UNDER 37 CFR §1.47(a)" filed on 04 November 2002.

BACKGROUND

In a decision from this Office on 04 September 2002, the petition was dismissed. The decision stated that Mr. Riches' averments were insufficient to show diligent effort to locate inventors Boboc, Ban and Spatar because the registered mailings by themselves were not considered "diligent effort" by petitioners. In addition, Mr. Riches did not show that he searched for the above non-signing inventors' new addresses either by the internet or by telephone directories, which would show in combination with the registered mailing diligent effort by petitioners to locate non-signing inventors Boboc, Ban, and Spatar.

On 04 November 2002, petitioners filed the present renewed petition.

DISCUSSION

Mr Maier's arguments are insufficient to show diligent effort to locate non-signing inventors Boboc, Ban and Spatar because no new evidence has been provided to show diligent effort to locate the non-signing inventors. Although Mr. Maier's remarks on ¶ 4 alleges that "[p]etitioners have resent registered letters to the last known addresses of the missing inventors and are having telephone directory and internet searches conducted and will report the results of these efforts as soon as they are completed in order to demonstrate Petitioners diligence ...", petitioners have not provided evidence of this effort with this renewed petition. For example, petitioners have not submitted copies of documentary evidence such as a copy of the returned envelope, a certified mail return receipt of the subsequent mailings. In addition, no copies of a

search for a new address either by the internet or by telephone directory for the non-signing inventors has been provided to show a diligent effort to locate the non-signing inventors.

With respect to Mr. Maier's arguments about the registered letter mailings to non-signing inventor Boboc, the mailing of the first registered letter on 8 August 2000 and the second mailing on 10 August 2000 to the same address is not considered diligent effort to locate inventor Boboc because the second mailing was done just two days after the first mailing and no diligent effort was done to determine if the nonsigning still lived in that address or had moved to another place.

Moreover, even though petitioners did not mail a complete copy to the non-signing inventors' last address, respectively, this is not necessary if petitioners had meet the requirements that the non-signing inventors were not located after diligent effort as stipulated under 37 CFR 1.47(a).

Consequently, at this time, again, it can not be concluded that the nonsigning inventors Boboc, Ban, and Spatar could not be found after diligent effort for the reasons stated above.

DECISION

The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Rafael Bacares
Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Leonard Smith
Legal Examiner
PCT Legal Office

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23 JUN 2003

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

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

In re Application of HOREA BACILA, ET AL. Application No.: 09/926,751 PCT No.: PCT/RO00/00008 Int. Filing Date: 13 April 2000 Priority Date: NA Attorney's Docket No. 215530US2PCT For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

This is in response to the "SUPPLEMENTAL REQUEST FOR RECONSIDERATION AND RENEWED PETITION UNDER 37 CFR §1.47(a)" filed on 14 April 2003.

BACKGROUND

In a decision from this Office on 23 April 2003, the petition was dismissed. The decision stated that the averments of Mr. Riches were insufficient to show diligent effort to locate inventors since petitioner had resent registered letters to the last known address of the missing inventors and were having telephone directory and internet searches conducted and would report the results of these efforts as soon as they are completed in order to demonstrate Petitioner's diligence.

On 23 April 2003, petitioners filed the present renewed petition accompanied with the results of these resent letters and the searches conducted.

DISCUSSION

The declarations of Mr. Riches and Crispin Burdett are sufficient to show diligent effort to locate non-signing inventors Boboc, Ban and Spatar because petitioner resent registered letters to the last known addresses of the missing inventors and were "not called for" as to Mr. Ovidiu Ban and Mr. Mihai Spatar, while the copy of the envelope addressed to Mr. Ovidiu Ban indicated "address unknown." In addition, telephone directory and internet searches were conducted but were unsuccessful in terms of discovering any new address information about the non-signing inventors.

Accordingly, the actions enumerated by submitted declarations are sufficient to establish that the non-signing inventors could not be found or reached after diligent effort.

Petitioner has satisfied items (1), (2), (3), and (4) under 37 CFR 1.47(a), thus completing the requirements under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED**.

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given a 35 U.S.C. 371(c)) date of **01 April 2002.**

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their last known addresses of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Richard Cole
PCT Legal Examiner
PCT Legal Office

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

Mr. Ovidiu Ban
9 Muggerdge Close
South Croydon
Surrey
SR2 7LB

In re Application of
HOREA BACILA, ET AL.
Application No.: 09/926,751
PCT No.: PCT/RO00/00008
Int. Filing Date: 13 April 2000
Priority Date: NA
Attorney's Docket No. 215530US2PCT
For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION

Dear Mr. Ban:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney 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 1.497(a) and (b).

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

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P.O BOX 1450
ALEXANDRIA, VA 22313-1450
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Mr. Mirela Boboc
Flat 2 Copthorn
34 Brighten Road
Caulsden, CR5 2BF,
Surrey

In re Application of
HOREA BACILA, ET AL.
Application No.: 09/926,751
PCT No.: PCT/RO00/00008
Int. Filing Date: 13 April 2000
Priority Date: NA
Attorney's Docket No. 215530US2PCT
For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION

Dear Mr. Boboc:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney 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 1.497(a) and (b).

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

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

Mr. Mihai Spatar
9 Muggerdge Close
South Croydon
Surrey
SR2 7LB

In re Application of
HOREA BACILA, ET AL.
Application No.: 09/926,751
PCT No.: PCT/RO00/00008
Int. Filing Date: 13 April 2000
Priority Date: NA
Attorney's Docket No. 215530US2PCT
For: APPARATUS AND A METHOD FOR SUPPLYING INFORMATION

Dear Mr. Spatar:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney 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 1.497(a) and (b).

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

OBLON SPIVAK MCCLELLAND
MAIER & NEUSTADT PC
FOURTH FLOOR
1755 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

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

J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slater Lane - 4th Floor
Alexandria, Virginia 22314-1176

In re Application of
KOLBECK et al.
U.S. Application No. 09/926,792
PCT No.: PCT/EP00/05795
Int. Filing Date: 23 June 2000
Priority Date: 25 June 1999
Atty. Docket No.: KOLB3002/JEK
For: METHOD FOR OPERATING A PORTABLE DATA CARRIER CONFIGURED FOR EXECUTING RELOADABLE FUNCTIONAL PROGRAMS

DECISION ON PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicants' "Petition under 37 CFR 1.47(a) and 1.497(b)(2)" filed 29 July 2002 to accept the application without the signature of joint inventor, Alexander Kolbeck. The required petition fee of $130.00 (37 CFR 1.17(i)) has been submitted.

BACKGROUND

On 23 June 2000, applicants filed international application PCT/EP00/05795 which claimed a priority date of 25 June 1999 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 January 2001. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States was midnight, 26 December 2001 (25 December 2001 was a holiday).

On 20 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); the international application; and a preliminary amendment.

On 01 February 2002, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 29 July 2002, applicants filed the present petition under 37 CFR 1.47(a) and a five-month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (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 address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) and (3) have been satisfied.

As to item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part:

> Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.
>
> Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application paper should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.
>
> 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 there is an express written refusal, a copy of the document evidencing that refusal must be made part of 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 the 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 should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

A review of the present petition reveals that applicant has not satisfied the item (2) above, in that the applicants have not shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Alexander Kolbeck. Petitioner states that representatives of Giesecke & Devrient attempted to obtain the signature of Mr. Kolbeck on numerous dates. However, the petition fails to state what application papers were sent to the missing inventor. Was a complete application

(specification, claims, and drawings) mailed to the missing inventor? Additionally, no documentary evidence to support the failed attempts were provided in the petition. Furthermore, it does not appear that the petitioner has first hand knowledge of all the facts.

In order to meet the requirements of 37 CFR 1.47(a) and Section 409.03(d) of the MPEP, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers was sent to Alexander Kolbeck and when such papers were sent and that Alexander Kolbeck has subsequently refused to execute the application. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc., should be supplied with the declaration.

As to item(4), the declarations filed 29 July 2002 are defective pursuant to 37 CFR 1.497(a)(3) which requires the declaration to identify each inventor and the country of citizenship of each inventor. Here, the declaration executed by the inventors does not contain a complete listing of all inventors. Therefore, the declarations are defective pursuant to 37 CFR 1.497. (See Section 201.03 of the Manual of Patent Examining Procedure (MPEP)).

For the reasons stated above, it would not be appropriate to accept the application without the signature of Alexander Kolbeck under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTH** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention to the PCT Legal Office.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 703-308-6314
Facsimile: 703-308-6459

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P.O. BOX 1450
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J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slater Lane - 4th Floor
Alexandria, Virginia 22314-1176

In re Application of KOLBECK et al. U.S. Application No. 09/926,792 PCT No.: PCT/EP00/05795 Int. Filing Date: 23 June 2000 Priority Date: 25 June 1999 Atty. Docket No.: KOLB3002/JEK For: METHOD FOR OPERATING A PORTABLE DATA CARRIER CONFIGURED FOR EXECUTING RELOADABLE FUNCTIONAL PROGRAMS	:	DECISION ON RENEWED PETITION UNDER 37 CFR 1.47(a)

This is a decision on applicants' "Renewed Petition under 37 CFR 1.47(a)" filed 03 April 2003 to accept the application without the signature of joint inventor, Alexander Kolbeck.

BACKGROUND

On 23 June 2000, applicants filed international application PCT/EP00/05795 which claimed a priority date of 25 June 1999 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 January 2001. A Demand for international preliminary examination was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States was midnight, 26 December 2001 (25 December 2001 was a holiday).

On 20 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); the international application; and a preliminary amendment.

On 01 February 2002, the United Stated Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 29 July 2002, applicants filed a petition under 37 CFR 1.47(a) and a five-month extension of time. The petition under 37 CFR 1.47(a) was dismissed in a Decision dated 03 December 2002.

On 03 April 2003, applicants filed "Renewed Petition under 37 CFR 1.47(a)" and a two-month extension of time.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (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 address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Applicants have satisfied items (1) and (3).

A review of the present petition and the accompanying papers reveal that applicants have satisfied item (2), in that the applicants have shown that a bona fide attempt was made to present the application papers, including the specification, claims, and drawings to Alexander Kolbeck. The steps taken by Mr. Branzka are sufficient to show that the non-signing inventor has refused to execute the application.

As to item (4), the declarations filed on 03 April 2003 are in compliance with 37 CFR 1.497. A review of the application papers reveal that applicants have completed all the requirements of 35 U.S.C. 371 for entry into the national stage.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **GRANTED**.

The application will be given an international filing date of 23 June 2000 under 35 U.S.C. 363, and a date of **03 April 2003** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

Anthony Smith

Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel.: 703-308-6314
Facsimile: 703-308-6459

23 JUN 2003

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

Mr. Alexander Kolbeck
Merowingerstrabe 12
D-82362 Weilheim
GERMANY

In re Application of
KOLBECK et al.
U.S. Application No. 09/926,792
PCT No.: PCT/EP00/05795
Int. Filing Date: 23 June 2000
Priority Date: 25 June 1999
Atty. Docket No.: KOLB3002/JEK
For: METHOD FOR OPERATING A PORTABLE DATA CARRIER CONFIGURED FOR EXECUTING RELOADABLE FUNCTIONAL PROGRAMS

Dear Mr. Kolbeck:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternately, you may arrange to do any of the preceding through a registered patent agent or attorney 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 the appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Anthony Smith

Anthony Smith
Attorney Advisor
Office of PCT Legal Administration

J. Ernest Kenney
Bacon & Thomas, PLLC
625 Slaters Lane - Fourth Floor
Alexandria, VA 22314
United States of America

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JAN - 6 2004

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

In re application of	:
Naokazu Takeda et al.	:
Serial No. : 09/926,799	: DECISION ON PETITION
Filed : December 20, 20001	:
Attorney Docket No.: 217039US0XPCT	:

This is in response to applicants' petition, filed October 2, 2003 under 37 CFR 1.144, requesting withdrawal of the restriction requirement set forth by the examiner.

BACKGROUND

Review of the file history shows that the examiner mailed a restriction (lack of unity) requirement under 35 U.S.C. 121 and 372 on January 27, 2003. The restriction requirement divided the claims into 15 groups. On February 22 applicants filed a response and preliminary amendment. Applicants elected Group I, but traversed the restriction requirement on the grounds that the claims as amended required all of the antibodies recited in Groups I-XI. On July 2, 2003 the examiner mailed an office action (non-final rejection) wherein the restriction requirement was made final.

DISCUSSION

On further consideration the examiner has agreed to recombine Groups I-XI. Applicants have not argued that the restriction between this invention and the inventions of Groups XII-XV is improper. Therefore, the restriction requirement is maintained with regard to those groups.

DECISION

Applicant's petition is **GRANTED** in part for the reasons set forth above.

The Office action of July 2, 2003 is **VACATED**. The application will be forwarded to the examiner for examination of Groups I-XI.

Any request for reconsideration or review 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.

Should there be any questions with regard to this letter please contact Bruce Campell by letter addressed to the Director, Technology Center 1600, P.O. Box 1450, Alexandria, VA, 22313-1450, or by telephone at (703) 308-4205 or by facsimile transmission at (703) 746-5006.

Jasemine C. Chambers

Jasemine Chambers
Director, Technology Center 1600

09/926803

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6-21-05

Paper No.: _____

TO SPE OF : ART UNIT 2871-D4ONG

SUBJECT : Request for Certificate of Correction on Patent No.: 6847428

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

ROCHAUN JOHNSON
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 119

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

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

Comments:

The corrected Figure 8 filed on May 26, 2005 is approved.

Thomas Dong Primary Exmn
SPE

2871
Art Unit

23 JUL 2003

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OBLON SPIVAK MCCLELLAND MAIER
& NEUSTADT PC
Fourth Floor
1755 Jefferson Davis Highway
Arlington, VA 22202

In re Application of	:	
Yoshihiko FUNAKOSHI, et al	:	DECISION ON
Application No.: 09/926,811	:	
PCT No.: PCT/JP01/02420	:	
Int. Filing Date: 26 March 2001	:	PETITION UNDER
Priority Date: 25 April 2000	:	
Attorney Docket No.: 217206US3PCT	:	
For: RADIOACTIVE SUBSTANCE CONTAINER,	:	37 CFR 1.181
... METHOD THEREOF	:	

This decision is in response to the "RESPONSE" received 13 January 2003, which is being treated as a petition under 37 CFR 1.181 requesting acceptance of a copy of the Combined Declaration which is believed to be proper as each Declaration indicates all of the inventors submitted as filed in the USPTO on 01 July 2002. Applicants have submitted, inter alia, a copy of the 01 July 2002 PTO stamped itemized postcard receipt. The itemized postcard lists, inter alia, the following item: New Declaration (10 Pages).

BACKGROUND

In a communication from this Office on 13 November 2002, the response to the Notice to file Missing Requirements filed on 01 July 2002 was sufficient but the application could not entered the national stage at that time. The communication indicated that the Combined Declarations and Power of Attorney submitted on 22 March 2002 was defective because the Declarations were incomplete as to identifying each inventor. As a result the Combined Declarations did not comply with 37 CFR 1.63.

On 13 January 2003, applicant submitted the instant petition.

DISCUSSION

Applicant's present petition accompanied by a copy of the following documents, filed purportedly with the PTO as indicated in the stamped postcard:

(1) Response to Notice of Missing Requirement Under 37 U.S.C. 371
(2) Copy of Notification of Defective Response
(3) Declaration of Yoshiharu TAURA

(4) New Declaration (10 pages)

The postcard lists the above items and bears a USPTO date of stamp as 01 July 2002.

MPEP 503 provides:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that the Combined Declarations and Power of Attorney were deposited with the U.S. Patent and Trademark Office on 01 July 2002.

Accordingly, the date of receipt for the Combined Declarations and Power of Attorney is 01 July 2002 and each Declaration is complete since each indicates all of the inventors. Thus, the Combine Declaration complies with 37 CFR 1.63

DECISION

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

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C.§ 371 date of **01 July 2002**.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Leonard Smith
PCT Legal Examiner
PCT Legal Office

25 MAR 2004

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P.O BOX 1450
ALEXANDRIA, VA 22313-1450
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Shoemaker and Mattare
Attn: Charles W. Fallow
2001 Jefferson Davis Highway
Suite 1203, P.O. Box 2286
Arlington, Virginia 22202-0286

In re Application of	:	DECISION ON RENEWED
MAIER et al	:	
PCT No.: PCT/CH99/00289	:	
Application No.: 09/926,821	:	
Int. Filing Date: 02 July 1999	:	PETITION UNDER
Priority Date: NA	:	
Attorney's Docket No.: 5088	:	
For: A Solid Formulation of	:	
Glucosamine Sulphate	:	37 CFR 1.47(a)

This is in response to the "RENEWED PETITION UNDER 37 C.F.R. §1.47(a)" filed on 22 September 2003, and the status letter of January 16, 2004.

BACKGROUND

In a decision from this Office on 18 April 2003, the initial petition under 37 CFR 1.47(a) was dismissed. The decision stated that petitioner has provided no proof to corroborate the mailing and the receipt of the correspondence by inventor Parekh. Consequently, it is unclear if he actually received the documents.

On 22 September 2003, applicant submitted a "Renewed Petition Under 37 CFR 1.47(a)" requesting reconsideration of the Office's decision of 18 April 2003 with respect to accepting the above application without the signature of nonsigning inventor Mr. Parekh. Filed with the renewed petition, *inter alia*, are a further declaration concerning a letter dated October 2, 2002 from Rene Wenger, a statement of Dieter Wolfgang Engel, and a declaration of Stella Xanthis.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(h), (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 address of the missing inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

The renewed petition of 22 September 2003 has satisfied requirement 2 under 37 CFR 1.47(a). Thus satisfying all the requirements under 37 CFR 1.47(a).

Mr. Wenger and Ms. Xanthis' averments do sufficiently demonstrate that a *bona fide* attempt was made to obtain the signature of Mr. Harish Parekh and that he refuses to sign the required papers. A package including the application was mailed to him on October 2, 2002 and he signed for the package on November 11, 2002, but has not returned the required papers. Accordingly, the conduct of Mr. Parekh is interpreted based on the evidentiary copies of the papers submitted as a refusal to sign the required papers. Consequently, the current record does sufficiently establish that Mr. Parekh refusal to join in the application.

Petitioner has now satisfied items (1), (2), (3), and (4) under 37 CFR 1.47(a), thus completing the requirements under 37 CFR 1.47(a).

CONCLUSION

The petition under 37 CFR 1.47(a) is **GRANTED**.

The Application Division and the International Division are authorized to accept the application as a 37 CFR 1.47(a) application and to mail a filing receipt. The application will be given a 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) date of **30 September 2002.**

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.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing under 35 U.S.C. 371.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Leonard Smith
PCT Legal Examiner
PCT Legal Office

25 MAR 2004

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Alte Steinacherstrasse 10
8804 Au
Switzerland

In re Application of
MAIER et al
PCT No.: PCT/CH99/00289
Application No.: 09/926,821
Int. Filing Date: 02 July 1999
Priority Date: NA
Attorney's Docket No.: 5088
For: A Solid Formulation of
Glucosamine Sulphate

Dear Mr. Parekh:

You are named as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an 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 to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney 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.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Telephone: (703) 308-6312
Facsimile: (703) 308-6459

Shoemaker and Mattare
Attn: Charles W. Fallow
2001 Jefferson Davis Highway
Suite 1203, P.O. Box 2286
Arlington, Virginia 22202-0286

#7

18 APR 2003

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www.uspto.gov

Shoemaker and Mattare
Attn: Charles W. Fallow
2001 Jefferson Davis Highway
Suite 1203, P.O. Box 2286
Arlington, Virginia 22202-0286

In re Application of	:	DECISION ON
MAIER et al	:	
PCT No.: PCT/CH99/00289	:	PETITION UNDER
Int. Filing Date: 02 July 1999	:	
Priority Date: NA	:	37 CFR 1.147(a)
Attorney's Docket No.: 5088	:	
For: A Solid Formulation of	:	
Glucosamine Sulphate	:	

This is in response to the "PETITION UNDER 37 CFR §1.47(a)" filed on 30 September 2002. The $130.00 petition fee has been paid by check.

BACKGROUND

On 26 December 2001, applicants filed international application PCT/CH99/00289. A DEMAND was filed on 02 February 2001 prior to the expiration of 19 months from the priority date electing the United States. Accordingly, the thirty (30) month time period for paying the basic national fee in the United States of America expired at midnight on 02 January 2002.

On 26 December 2001, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee. No executed oath or declaration from the inventors accompanied the Transmittal Letter. A copy of the intentional application was transmitted on 11 January 2001 to the USPTO from the International Bureau.

On 08 March 2002, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a), and (b), identifying the application by International application number and international filing date" must be submitted within two months from its 08 March 2002 date of mailing or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 30 September 2002, applicants filed the present petition accompanied, inter alia, an executed Declaration without the signature of PAREKH, Harish.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (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 address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Furthermore, section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.) **Proof of Unavailability or Refusal**, the relevant sections states, in part:

"...Where a refusal of the inventor to sign the application paper is alleged, the circumstances of the refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings and oath or declaration) to the nonsigning inventor for signature.

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 there is an express written refusal, a copy of the document evidencing that refusal must be made part of 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. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration."

Petitioner has satisfied requirements (1), (3), and (4) of 37 CFR 1.47(a). However, requirement (2) has not been satisfied.

The averments of the petition are insufficient to support a finding that the nonsigning inventor, PAREKH, Harish refuses to sign. Although, petitioner has stated that a complete copy of the application papers were sent to the nonsigning inventor, petitioner has provided no proof to corroborate the mailing and the receipt of the correspondence by inventor Parekh. Petitioner has not submitted copies of documentary evidence such as a copy of the registered returned envelope, a certified mail return receipt, a cover letter instructions, and etc., as required by MPEP Section 409.03 to support his allegation about the correspondence sent to Mr. Parekh. Consequently, it is unclear if he actually received the documents.

Consequently, the petition does not include sufficient factual proof that Mr. Parekh refused to sign the required documents.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration of the merits of the petition under 37 CFR 1.47(a) is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)."

Any further correspondence with respect to this matter should be addressed to the Commissioner for Patents, Office of PCT Legal Administration, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.

Rafael Bacares
PCT Legal Examiner
PCT Legal Office

Leonard Smith
PCT Legal Examiner
PCT Legal Office

Telephone: (703) 308-6312
Facsimile: (703) 308-6459

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Paper No. 14

Maine & Asmus
PO Box 3445
Nashua, NH 03061-3445

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MAR 2 9 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Bebber, W. et al. :
Application No. 09/927,034 :
Filed: August 9, 2001 :
Attorney Docket No. 2020.23B :

This is a decision on the petition under 37 CFR 1.137(b), filed January 30, 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 in reply to the non-final Office action mailed November 6, 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 7, 2003.

The Terminal Disclaimers filed on January 30, 2004, are unnecessary as a condition for revival of the instant application and will not be processed (note 37 CFR 1.137(c)). In view thereof, the $220 payment will be refunded.

The application file is being forwarded to Technology Center AU 1771 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

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Commissioner for Patents
United States Patent and Trademark Office
PO Box 1450
Arlington, VA 22313-1450
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Paper No. 11

R. A. Anderson
Philips Davis & Hoffmann
1801 Century Park East, 23rd Fl.
Los Angeles, CA 90067

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MAY 2 9 2003

OFFICE OF PETITIONS

In re Application of	:	
Christopher Redwine et al.	:	
Application No. 09/927,035	:	ON PETITION
Filed: August 9, 2001	:	
Attorney Docket No. 4728	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 21, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the non-final Office action mailed April 12, 2002, which set a shortened statutory period for reply of three (3) months. A reply to the Office action was filed on October 3, 2002 without the required extension of time. Therefore, the above-identified application became abandoned on July 13, 2002.

This application is being forwarded to Technology Center AU 3711.

Telephone inquiries regarding this decision may 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

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

VIRTUAL LEGAL, P.C.
MICHAEL A. KERR
3476 EXECUTIVE POINTE WAY, UNIT 16
CARSON CITY NV 89706

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JAN 1 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Redwine et al.	:	
Application No. 09/927,035	:	ON PETITION
Filed: August 9, 2001	:	
Attorney Docket No. RED 05.001	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 12, 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 RCE (with requisite fee) 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.

This matter is being referred to Technology Center 3700 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

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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JJGJR.: 01-05

Paper No: __

JAY H MAIOLI
COOPER & DUNHAM
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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JAN 14 2005
OFFICE OF PETITIONS

In re Application of
Bryant :
Application No. 09/297,038 :
Filing Date: 26 April, 1999
Attorney Docket No. 6715/56610 :

This is a decision on the petition filed on 10 December, 2004, alleging, *inter alia*, unavoidable delay under 37 C.F.R. §1.137(a).

For the reasons set forth below, the petition as considered under 37 C.F.R. §1.137(a) is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b)[1] (as to unintentional delay) must be submitted within two (2)

[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.)

months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";

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

BACKGROUND

The record reflects that:

- a final Office action was mailed on 7 April, 2004;
- Petitioner filed an amendment after final on 12 July, 2004, over a 7 July, 2004, certificate of mail;
- on 18 November, 2004, the Examiner mailed an Advisory Action indicating, *inter alia*, that the amendment after final did not place the application in condition for allowance;
- thus, Petitioner failed to reply timely and properly to the final Office action of 7 April, 2004, with a reply due absent extension of time on or before 7 July, 2004;
- the application went abandoned after midnight 7 July, 2004;
- no Notice of Abandonment was mailed before the instant petition was filed;
- accompanying the instant petition is a request for continued examination (RCE) with fee, and Petitioner has identified his amendment after final as his submission under the regulation;
- Petitioner alleges unavoidable delay, but support the allegation only with his statement that he filed his amendment after final and the Examiner did not address the matter until after the end of the full statutory period.

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 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]))

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

Petitioner has failed to satisfy the "showing" requirement. The fact that Petitioner elected to file an amendment after final, which did not *prima facie* place the application in condition 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.

[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.

allowance and, therefore, was not a proper reply,[8] does not constitute a showing of unavoidable delay.

CONCLUSION

In the absence of the proper showing, the instant petition under 37 C.F.R. §1.137(a) hereby is **dismissed**.

ALTERNATIVE VENUE

It appears that Petitioner will be unable to make a showing of unavoidable delay. Petitioner's only alternative to irretrievable abandonment is to file a petition under 37 C.F.R. §1.137(b) (state therein that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional").

Thus, Petitioner may wish to supplement the petition to plead alternatively under 37 C.F.R. §1.137(b) wherein the "showing" burden is much less onerous.

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

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

By FAX: IFW Formal Filings
(703) 872-9306
ATTN.: Office of Petitions

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

---

[8] A proper reply is a an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or a CPA or RCE (with fee and submission). (See: MPEP §711.03(c).)

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

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

AUG 05 2004 JC22 PATENT & TRADEMARK OFFICE

1722

Pet Dec

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

Application Number	~~[illegible]~~ 09/927,087
Filing Date	08/09/2001
First Named Inventor	Jacino
Art Unit	1722
Examiner Name	Luk
Attorney Docket Number	1714-39

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

Approved
Jacqueline M. Stone, Director
Technology Center 1700
6/16/05

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

- [ ] all the attorneys/agents of record.
- [ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- [ ] the attorneys/agents associated with Customer Number [ ]

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

The reasons for this request are: JOINT INVENTORS ARE UNABLE TO REACH AGREEMENT WITH RESPECT TO CONTINUED PROSECUTION OF THIS APPLICATION.COPIES OF ALL PAPERS AND PROPERTY TO WHICH THEY ARE ENTITLED HAVE BEEN FORWARDED TO APPLICANTS

CORRESPONDENCE ADDRESS

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

[ ] Customer Number: [ ]

OR

[x] Firm or Individual Name	Gerald Jacino (first named inventor MPEP 403)				
Address	241 Farhan Lane				
Address					
City	North Babylon	State	NY	Zip	11703
Country	USA				
Telephone	631-231-5222	Fax			
Name	M Arthur Auslander				
Signature	M Arthur Auslander	Registration No.	18376		
Date	August 3 2004	Telephone No.	718-543-0266		

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

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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Alexandria, VA 22313-1450
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MAY 27 2010

OFFICE OF PETITIONS

MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES IA 50309-2721

In re Patent No 6,911,204
Issue Date: June 28, 2005
Application No. 09/927,121
Filed: August 10, 2001
Attorney Docket No. P09575US01

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed March 17, 2010, to accept the unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **GRANTED**.

This patent expired on June 28, 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.

Since the statement appearing in the petition varies from the language required by 37 CFR 1.378(c), the statement is being construed as the required statement. Petitioner must notify the Office if this is **not** a correct reading of the statement appearing in the petition.

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

The patent file is being forwarded to Files Repository.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 27 2010

OFFICE OF PETITIONS

MCKEE, VOORHEES & SEASE, P.L.C.
801 GRAND AVENUE
SUITE 3200
DES MOINES IA 50309-2721

In re Application of	:	
Daniel P. GOLD, et al	:	
Application No. 09/927,122	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. P09578US01	:	

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

The petition is **DISMISSED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed March 18, 2008, which set a shortened statutory period for reply of **three (3) months**. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 19, 2008.

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

With respect to item (1): A review of the Office record shows that the Request for Continued Examination (RCE) submitted with the petition dated March 17, 2010, in response to the Office action of March 18, 2008, is improper. In this regard, the RCE was not accompanied by a submission (37 CFR 1.114). Accordingly, the required reply is considered incomplete and does not meet the requirements as set forth in 37 CFR 1.137(b).

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.

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

William J. Kolegraff
Kyocera Wireless Corp.
10300 Campus Point Drive
San Diego, CA 92121

COPY MAILED

APR 3 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Rajaram et al.	:	DISMISSAL OF PETITION
Application No. 09/927,131	:	UNDER 37 CFR 1.78(a)(3)
Filed: August 10, 2001	:	
Attorney Docket No. UTL 00104	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 2, 2004, to accept an unintentionally delayed claim for the benefit of priority based on the applications set forth in the concurrently filed amendment.

The petition is **dismissed**.

When an application is filed on or after November 29, 2000, benefit claims under 35 U.S.C. 119(e), 120, 121 and 365(c) must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. For the instant application, the above period of time ended on November 26, 2002. The priority claims at issue were not made by this date. However, petitioner has submitted a petition under 37 CFR 1.78(a)(3).

37 CFR 1.78(a)(3) states,

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(t); 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.

Petitioner has failed to satisfy (i) above. Specifically, a *proper* amendment adding the priority claims has not been filed. Rule 78 may not be used to incorporate by reference material which was not previously incorporated by reference. In this case, the amendment seeks to incorporate by reference several applications which were not incorporated by reference when the application was originally filed.

The petition cannot be granted until a proper amendment is filed. Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

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 (703) 306-5683.

Charles Pearson
Director
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

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OCT 06 2004

OFFICE OF PETITIONS

William J. Kolegraff
Kyocera Wireless Corp.
10300 Campus Point Drive
San Diego, CA 92121

In re Application of	:	
Rajaram et al.	:	GRANT OF PETITION
Application No. 09/927,131	:	UNDER 37 CFR 1.78(a)(3)
Filed: August 10, 2001	:	
Attorney Docket No. UTL 00104	:	

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed June 1, 2004, to accept an unintentionally delayed claim for the benefit of priority based on the applications set forth in the concurrently filed amendment.

The petition is **granted**.

When an application is filed on or after November 29, 2000, benefit claims under 35 U.S.C. 119(e), 120, 121 and 365(c) must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. For the instant application, the above period of time ended on November 26, 2002. The priority claims at issue were not made by this date. However, petitioner has submitted a petition under 37 CFR 1.78(a)(3).

37 CFR 1.78(a)(3) states,

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(t); 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.

Petitioner has satisfied the above requirements for relief under 37 CFR 1.78(a)(3).

The granting of this petition is not a determination that petitioner is actually entitled to the benefit of the filing date of the prior-filed applications, but is only a determination that the Office will allow petitioner to file an untimely claim for priority. The examiner will, in due course, consider any priority claims and determine the extent to which the application is entitled to an earlier filing date.

A corrected Filing Receipt, which includes the priority claims, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2122 for appropriate action on the amendment submitted June 1, 2004, including consideration by the examiner of the claims for priority. **The examiner should consider the priority claims and determine the extent to which the application is entitled to an earlier filing date based on the prior-filed applications.**

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

Brantley for

Charles Pearson
Director
Office of Petitions

Attached: 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. 10

Norman R. Klivans
SKJERVEN MORRILL MacPHERSON LLP
Suite 700
25 Metro Drive
San Jose CA 95110-1349

FEB - 7 2003

In re Application of:	:	
Ogle, *et al.*	:	
Application No. 09/927,134	:	DECISION ON REQUEST TO WITHDRAW FROM RECORD
Filed: August 10, 2001	:	
For: PROCESS FOR TREATING ONO DIELECTRIC FILM OF A FLOATING GATE MEMORY CELL	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed January 21, 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 that can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above requirements. The request was signed by Norman R. Klivans, an attorney of record in the above identified application. On October 16, 2002, the Office mailed a non-final Office Action setting forth a three-month shortened statutory period for reply that is extendable by petition under 37 C.F.R. § 1.136(a) through April 16, 2003. As such, there is at least thirty (30) days remaining between the date of this decision and the expiration date of the maximum time period that can be extended under 37 C.F.R. § 1.136(a).

The request is approved.

The application currently has no attorney of record.

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

Inquiries related to this decision should be directed to Lissi Mojica Marquis at (703) 308-2260.

Lissi Mojica Marquis, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Mike Farjami
Farjami & Farjami
16148 Sand Canyon
Irvine, CA 92618

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

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DEC 0 7 2007

OFFICE OF PETITIONS

In re Application of :
John Wilkes. :
Application No. 09/927,163 : ON PETITION
Filed: August 9, 2001 :
Attorney Docket No. 10006371-1 :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed November 5, 2007, and in duplicate on November 8, 2007.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is **granted**.

This application was held abandoned on May 8, 2007, after it was believed that no response was received to the final Office action mailed February 7, 2007. The notice allowed a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on October 10, 2007, indicating that a reply to the final Office action was not received.

The instant petition maintains that the response to final Office action was timely filed in the form of a Notice of Appeal filed July 12, 2007. The petition is accompanied by a copy of the Notice of Appeal with a certificate of mailing dated July 9, 2007, a copy of the Office date-stamped postcard whereby the Office acknowledged receiving the Notice of Appeal on July 12, 2007. The application file history reveals that a payment for a request for an extension of time within the second month was received on July 12, 2007.

Based on the aforementioned, it appears that the application was improperly held abandoned as a proper response to the final Office action was received prior to expiration of the maximum statutory period for reply. The holding of abandonment is withdrawn, accordingly.

It is noted that deposit account 08-2025 was charged twice for extensions of time within the second month, but the payments were also received via check. Deposit account 08-2025 will be refunded $450.00 and $460.00, accordingly.

The application file is being forwarded to Technology Center 2100, GAU 2162 for further processing, including review of the appeal brief filed November 8, 2007.[1]

[1] The appeal brief is timely received based on the Notice of Appeal and extension of time within the second month being received on July 12, 2007, and the extendable period for filing an appeal brief running from the date the Notice of Appeal is filed. The appeal brief filed November 8, 2007, is timely with an extension of time within the second month.

Questions regarding this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Weaver Austin Villeneuve & Sampson LLP - IGT
Attn: IGT
P.O. Box 70250
Oakland, CA 94612-0250

Mail Date: 04/20/2010

Applicant	: Richard E. Rowe	: DECISION ON REQUEST FOR
Patent Number	: 7617151	: RECALCULATION of PATENT
Issue Date	: 11/10/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/927,184	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/06/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1673** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MORRIS I. POLLACK
19 EBERHAROR ROAD
EAST HANOVER NJ 07936

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JAN 06 2009

OFFICE OF PETITIONS

In re Application of
John Merva, et. al.
Application No. 09/927,187
Filed: August 10, 2001
Attorney Docket No. RVSI-020

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed November 17, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to reply in a timely manner to the Non-Final Rejection mailed, February 10, 2006, 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 May 11, 2006.

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

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

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

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

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

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "under this section a petition accompanied by either a fee of $500 or a fee of $50 **would not be granted where the abandonment** or the failure to pay the fee for issuing the patent **was intentional** as opposed to being unintentional or unavoidable." [emphasis added]. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b). *See* In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (over 2 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on May 11, 2006. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Morris I. Pollack was counsel of record at the time of abandonment, they should explain why this application became abandoned while it was under their control and what efforts they made to further reply of itself and with whom this matter was discussed. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), and whoever else was involved with this application at the time of abandonment. Statements are required from any and all person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). *See* MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. *See* H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in 1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. *See* Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (over 2 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. *See* Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons then at Morris I. Pollack and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. *See also* New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 11

Paul A. Mendonsa
12400 Wilshire Blvd., Seventh Floor
Los Angeles, CA 90025

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MAY 28 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of :
John B. Abjanic :
Application No. 09/927,255 :
Filed: August 10, 2001 :
Attorney Docket No. 42P8759X :

This is a decision on the petition filed under 37 CFR 1.137(b), filed April 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 August 22, 2001. A response was received on September 24, 2001 and October 1, 2001. In reply a Notice of Incomplete Reply was mailed on October 30, 2001 and in response applicant filed a one month extension of time and formal drawings. Accordingly, the application became abandoned on January 17, 2002.

The file will be forwarded to the Office of Initial Patent Examination 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

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UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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OCT 10 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Frank L. Cire
Christie, Parker & Hale,LLP
350 West Colorado Boulevard
Suite 500
Pasadena, CA 91105

Paper No. 8

In re Application of: James C. Thomas, Jr.	:	PETITION TO INVOKE
Application No. 09/927,296	:	SUPERVISORY AUTHORITY
Filed: August 10, 2001	:	UNDER
Attorney Docket No.: 45659/TJD/T503	:	37 C.F.R. 1.181
For: COMPUTERIZED SYSTEM FOR	:	
COMBINING INSURANCE COMPANY	:	
AND CREDIT CARD TRANSACTIONS	:	

This is in response to applicant's petition filed on August 19, 2003 to have the June 3, 2003 Office action withdrawn and to have a new Office action issued.

The petition is **DENIED**.

Petitioner's arguments are directed to two main issues. The first of these is the discrepancy between the International Preliminary Examination Report (IPER) and the June 3, 2003 Office action and the second issue is directed to the June 3, 2003 Office action being deficient.

With respect to the discrepancy between the IPER and the June 3, 2003 Office action, this argument goes to the patentability of the claims over the prior art, which is an appealable, and not a petitionable, matter and as such will not be addressed here. However, any decisions concerning patentability made in a PCT application are not binding upon a U.S. filed application.

Petitioner, with respect to the June 3, 2003 Office action being deficient points to several areas of concern. Petitioner argues that the rejection of claims 23-32 as being anticipated by Cummings is an omnibus rejection with no correlation of the claim limitations to the disclosure of the reference. Further, petitioner points to MPEP 707.07(d) to provide support for the position that claims shouldn't be grouped together in a single rejection unless the rejection is equally applicable to all of the claims. Also, that the examiner has failed to provide any factual or technical reasoning to support the inherency holding. Finally with respect to the rejection under 35U.S.C. 103(a) petitioner argues that the examiner has failed to develop a prima facie case in support of the

rejection. In this rejection, it is urged, that the claims were rejected without addressing any of the claim limitations.

A review of the file history indicates that the June 3, 2003 Office action contains a rejection for claims 23-32 under 35 U.S.C. 102(b) as being anticipated by Cummings, Jr. and the examiner goes on to explain how the reference reads on the basic concept of the claims. As for this being an omnibus rejection this is clearly not the case. It is clear from the rejection that the examiner has taken the position that all of claims 23-32 are anticipated by the Cummings Jr. reference. As such the requirement of MPEP 707.07(d) have been met. There is no requirement for the examiner to map each and every feature of the claims to the reference. For an anticipatory rejection the reference has to disclose all of the features set for in the claims. As to the examiner failing to identify any factual or technical reason for the holding of inherency, this in itself does not make the rejection wrong as long as the art can reasonably be interpreted to meet the claim limitations. If the petitioner is not in agreement with the examiners rejection under 35 U.S.C. 102 they have the right to argue this before the examiner and to challenge the holding of inherency by the examiner and to ultimately request a hearing before the Board of Patent Appeals and Interferences.

With respect to the rejection under 35 U.S.C. 103(a) the examiner has provided an explanation as to what is lacking in the base reference and further explains why it would have been obvious to modify the base reference. The rejection is clear and petitioner has the right to respond and to argue the features they feel are not disclosed by the references or why the base reference cannot be modified as suggested by the examiner.

Accordingly the petition is denied. Applicant's three month period for response to the June 3, 2003 Office action continues to run. The application will be forwarded to central files to await a response by applicant.

Any questions concerning this decision should be directed to Robert Olszewski at (703) 308-5183.

Summary: ***Petition Denied***

John J. Love, Director
Patent Technology Center 3600
(703) 308-1020

SNM/RPO: 10/01/03

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Paper No. 3

BAKER & HOSTETLER LLP
WASHINGTON SQUARE, SUITE 1100
1050 CONNECTICUT AVE. N.W.
WASHINGTON DC 20036-5304

MAIL

NOV 04 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Steven G. Schmidt
Application No. 09/927,359
Filed: August 13, 2001
For: MULTIPLE ARBITRATION CIRCUIT

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on September 19, 2002.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All attorneys in the application are removed from record except for Susan E. Shaw McBee who will retain power of attorney.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Connolly Bove Lodge & Hutz LLP
1990 M Street, NW
Suite 800
Washington, DC 20036

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 12

ROSENBERG, KLEIN & LEE
3458 ELLICOTT CENTER DRIVE - SUITE 101
ELLICOTT CITY, MD 21043

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MAR 2 1 2006

OFFICE OF PETITIONS

In re Application of	:	
Michael Yeh	:	
Application No. 09/927,384	:	ON PETITION
Filed: August 13, 2001	:	
Attorney Docket No. MR2349-671	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 30, 2006, to revive the above-identified application.

This application became abandoned for failure to timely respond to the final Office action mailed on February 25, 2003. A Notice of Abandonment was mailed September 9, 2003.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. In accordance with 37 CFR 1.34(a), the signature of Steven Rabin appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. 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.

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) under 37 CFR 1.114, with the $395 filing fee; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office also acknowledges receipt of an amendment filed January 30, 2006.

This application is being revived for consideration of the RCE.

The application file is being referred to Technology Center Art Unit 2854.

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

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Steven M. Rabin
1101 14th Street, NW – Ste. 500
Washington, DC 20005

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Alexandria, VA 22313-1450
www.uspto.gov

AJINOMOTO CORPORATE SERVICES, LLC
INTELLECTUAL PROPERTY DEPARTMENT
1120 CONNECTICUT AVE., N.W.
WASHINGTON DC 20036

In re Application of:
Livshits et al.
Serial No.: 09/927,395
Filed: August 13, 2001
Attorney Docket No.: 212607US0DIV

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in response to applicants' petition under 37 CFR. § 1.181(a) and MPEP 711.03(c) filed on January 14, 2005, requesting withdrawal of the holding of abandonment of the above-identified application based on non-receipt of an Office action and to restore the application to a pending status.

A review of the file history shows that the Office mailed a non-final Office action, setting a three-month statutory time period for reply, to applicants on April 29, 2004. On January 12, 2005, the examiner mailed a notice of abandonment for failure to respond to the outstanding Office action.

Applicants state that the Office action of April 29, 2004 was never received and provides as evidence thereof a copy of the attorney docket report where the Office action would have been entered if received, showing non-receipt of the Office action. Additionally, the Office action of April 29, 2004, as indicated by PAIRS, shows an incorrect mailing address. Based on the evidence presented, it is concluded that applicants never received the Office action. In view thereof, the Notice of Abandonment mailed January 14, 2005, is vacated and the application is restored to pending status with the mailing date of this decision.

Applicants' petition is **GRANTED**. The application will be forwarded to the examiner for prompt mailing of a new Office action.

Should there be any questions about this decision, please contact Marianne C. Seidel by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile at 703-872-9306.

Marianne C. Seidel for

Bruce Kisliuk
Director, Technology Center 1600

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AUG 0 4 2005

OFFICE OF PETITIONS

DAVID B. RITCHIE
P.O. BOX 640640
SAN JOSE, CA 95164-0640

In re Application of	:	
Goldenberg et al	:	DECISION
Application No. 09/927,416	:	ON PETITION
Filed: August 10, 2001	:	37 CFR 1.137(b)
Attorney Docket No. IMMR-115A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 6, 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.

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

The instant petition lacks item(s) (1) a proper reply as the RCE filed with the petition did not include payment of the issue fee, which is required. 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 on October 21, 2004, which set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on January 22, 2005. A Notice of Abandonment was mailed on March 3, 2005.

The Petitioner is advised that if the petitioner decides to pay for the issue fee in a Renewed petition under 1.137(b) and if the above-identified application is allowed, a 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." Petitoner is advised that, whether a fee is indicated 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).

While the Revocation and Power of Attorney have been entered, the correspondence does not comply with 37 CFR 3.73(b). In order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. More specifically, 37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g. copy of an executed assignment submitted for recording) or by specifying (e.g. reel and frame number) where such evidence is recorded in the Office, (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a manner pending before the Office. A blank 37 CFR 3.73(b) accompanies this decision.

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

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

By hand:
Customer Service Window
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 Gene Kim at (571) 272-6052 or the undersigned at (571)272-3217.

Karen Creasy for

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

Attachment: Blank copy of 37 CFR 3.73(b) form

UNITED STATES PATENT AND TRADEMARK OFFICE

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DAVID B RITCHIE
THELEN REID & PRIEST LLP
P O BOX 640640
SAN JOSE CA 95164-0640

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OFFICE OF PETITIONS

In re Application of	:	
Alex S. GOLDENBERG et al.	:	
Application No. 09/927,416	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. IMMR-115A	:	

This is a decision on the petitions, filed October 6, 2005, under 37 CFR 1.137(b) to revive the above-identified application, and under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petitions are **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 October 21, 2004, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on January 22, 2005.

The petition under 37 CFR 1.137(b) satisfies the conditions for revival 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.

Furthermore, 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).

Application No. 09/927,416

Petitioner is advised that the issue fee paid on October 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center AU 2838 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Brian Hearn
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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WASHINGTON, D.C. 20231
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Paper No. 7

Lawrence D. Graham
Black Lowe & Graham
816 Second Avenue
Seattle, WA 98104

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AUG 0 9 2002

OFFICE OF PETITIONS

In re Application of
Jarrod Barr
Application No. 09/927,433
Filed: August 10, 2001
Attorney Docket No. SECC-1-1001

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 8, 2002 and supplemented on July 31, 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 September 17, 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 November 18, 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 extension of time submitted with the petition on July 8, 2002 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account number 50-1050.

The Power of Attorney has been accepted and recorded.

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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BLACK LOWE & GRAHAM, PLLC
701 FIFTH AVENUE
SUITE 4800
SEATTLE WA 98104

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OFFICE OF PETITIONS

In re Application of :
Barr :
Application No. 09/927,433 : ON PETITION
Filed: August 10, 2001 :
For: MODULAR PACKAGE SYSTEM WITH BELT AND LEG BAGS :

This is a decision on the petition filed April 11, 2005, which is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment. The delay in treating this petition is regretted.

The petition considered under 37 CFR 1.181 is **granted.**

This application apparently became abandoned by operation of 35 U.S.C. § 151 for failure to pay the issue fee on or before October 22, 1995, as required by the Notice of Allowance and Issue Fee Due ("Notice") mailed July 22, 2004, which set a statutory period of three months within which to pay the fee to avoid abandonment. A Notice of Abandonment was not mailed. February 29, 1996.

Petitioner request that the holding of abandonment be withdrawn due to non receipt of a supplemental Notice of Allowance that petitioner expected would be mailed along with a supplemental Notice of Allowability containing additional post-allowance amendment to claim 5.

it is noted that a Notice of Allowability makes no reference to payment of the issue fee; that matter is treated by the Notice of Allowance. Petitioner's contention that he was prudent in expecting, and delaying payment of the issue fee until, the mailing a second Notice of Allowance has no basis in USPTO practice. Petitioner appears unaware of relevant USPTO policy noted in 1056 *Off. Gaz.* 35 (June 12, 1985) reproduced below:

ERRORS IN THE NOTICE OF ALLOWANCE

> The purpose of this notice is to clarify existing Office practice with respect to providing a new issue fee due date. Sometimes errors appear in the Notice of Allowance, such as an incorrect number of claims, the misspelling of an inventor's name, an incorrect inventorship, or an incorrect title. A duplicate Notice of Allowance correcting the errors may be requested from the Group that mailed the Notice. However, a new issue fee due date will not be provided if the information on the original Notice of Allowance is sufficient to allow a reasonable practitioner to timely file a proper issue fee in the correct application. Specifically, the mere filing of a request for a corrected or duplicate Notice of Allowance will not act to stay the period for paying the issue fee.

Accordingly the holding of abandonment is not being withdrawn based on the reasons given in the petition, which do not allege non receipt of the first and only notice of allowance. Rather petitioner contends the case is not abandoned based non receipt of the Notice that petitioner assumes albeit incorrectly, should have been forthcoming and was in fact never mailed. The petition tacitly admits petitioner's awareness of the existence of the first and only Notice of Allowance, but fails to demonstrate as required by Delgar, Inc. v. Schuyler, 172 USPQ 513 (D.D.C. 1971), that the Notice mailed July 22, 2004, was not received. It is noted that

petitioner's last communications to the USPTO reflect a different address prior to the mailing of the Notices, but no effort was made to call USPTO attention to the fact of a change in correspondence address For future reference, petitioner should timely remit the issue fee regardless of any other issues to avoid a holding of abandonment for failure to reply. A change in correspondence address is to be promptly and conspicuously brought to the attention of the USPTO, a circumstance that did not happen here.

Inspection of the record reveals that on August 4, 2004, the USPS returned to the USPTO the Notices of Allowance and Allowability mailed July 22, 2004, as undeliverable. Thus, another government agency has provided, on the record, independent corroboration of petitioner's non receipt of the Notices mailed July 22, 2004. See Ex Parte Gourtoff, According to MPEP 707.13 when, as here, the Office action of July 22, 2004, was returned as undeliverable to counsel by the USPS, the examiner was to take "every reasonable means" to ascertain the correct correspondence address, and remail the Office action to that address, rather than to hold the application abandoned for failure to reply to the prior mailing. § 707.13 further indicates that the period for reply is restarted by the remailing. As such, predicating or maintaining the holding of abandonment on the failure to reply to the Notice of July 22, 2004, is inconsistent with the practice set forth in MPEP 707.13 under the facts of this case. Accordingly, any holding of abandonment is improper and cannot be permitted to stand. Had the record failed to show return of the Notices as undeliverable, the holding of abandonment would not have been withdrawn.

The $130 fee has been credited to counsel's deposit account as no fee is due for a petition under 37 CFR 1.181.

The instant application is being referred to the attention of the Technology Center for remailing the Notice of Allowance mailed July 22, 2004, returned as undeliverable, and resetting therein the 3 month period for reply. The Notice of Allowability mailed July 22, 2004 will also be remailed and the 3 month period for reply restarted.

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

Brian Hearn
Petitions Examiner
Office of Petitions

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BROWDY AND NEIMARK PLLC
624 NINTH STREET NW
SUITE 300
WASHINGTON, DC 20001-5303

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FEB 15 2005

OFFICE OF PETITIONS

In re Application of	:	
Laurent Fournier	:	
Application No. 09/927,457	:	NOTICE
Filed: August 13, 2001	:	
Attorney Docket No. FOURNIER=1	:	

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) 272-3218.

This matter is being referred to Technology Center AU 2122.

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

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OCT 12 2004

BROWDY AND BEIMARK, PLLC
624 NINTH STREET, NW
WASHINGTON, DC 20001

In re Application of	:
David Wallach et al	:
Serial No.: 09/927,458	: PETITION DECISION
Filed: August 13, 2001	:
Attorney Docket No.: WALLACH-22A	:

This is in response to the petition under 37 CFR 1.181, filed October 30, 2003, requesting reversal of an examiner's actions.

BACKGROUND

A review of the file history shows that this is a continuation-in-part of abandoned application SN 09/381,358 and that an identical petition has been filed in that application. That petition will not be addressed directly as this petition decision will render consideration thereof moot.

The '358 application is the National stage entry of PCT/IL98/00125, filed March 19, 1998. The PCT application discloses and claims a specific RAP protein, a deposit of which was made at the Collection Nationale De Cultures Microorganisms (CNCM) at the Institut Pasteur on July 26, 2001 and given Accession No. I-2706. The examiner has rejected the claims of this application over US Pat No. 6,232,081 based on an identical sequence being taught therein and having a priority date earlier that the date of this application or the date of deposit of the sequence. The examiner has also raised the issue that the sequence listing in the parent application and of the deposited sample differ in length and therefore priority cannot be granted back to the date of filing of the PCT application.

The examiner mailed a Final Office action to applicants on June 14, 2004, setting a three month shortened statutory period for reply. The examiner maintained the rejection of the claims based on denial of priority to the PCT application, although such is not explicitly stated therein.

Applicants filed this petition on October 30, 2003, having both the abandoned and current application Serial No's thereon. The petition was placed in the abandoned parent file and not further acted on. A copy of the petition will also be entered in this application file.

DISCUSSION

The entire prosecution of this application, and the parent application also, revolves around what the correct sequence for the deposited sample is and the difference in sequence listings in the

applications. Applicants have provided proper affidavits accompanying the identification of the Accession Number for the deposited sample stating that it was in the inventors possession from discovery and filing of the PCT application until deposited in the depository and that availability thereto will not be restricted upon grant of the patent. The only point of dispute is the sequence listing. Applicants attest that the sequence listing filed with the PCT application contained an error. The error was not discovered until after the entry into the National stage occurred in various jurisdictions and preparation for depositing the sequence were being made. At that time the sequence listing in the PCT application could no longer be corrected. However, it could be corrected in National stage applications. The manner of correcting it in the US application was to file a CIP application containing the correct sequence listing with the proper priority claim to the parent and PCT applications. As noted in the petition, the material was identified properly in the earliest application (PCT) even though the correct sequence was not set forth.

Applicants have established by proper affidavit that the material claimed in the original application is the same one claimed herein and has been in the possession of the inventor from time of filing of the earliest application until deposition in a proper depository was made. That an error in determining the correct sequence was made initially does not affect the material, only its identification. Also noted is that the error in the sequence was corrected when it was discovered and prior to its deposition. This is understood to be a not uncommon occurrence as sequencing techniques have improved over time.

In summary, applicants are entitled to a claim of priority for the claimed deposited material and its proper sequence back to the date of the originally filed PCT application. The examiner is directed to accept applicants' affidavits relating to the deposited sequence with respect to this matter as providing proper support therefore.

The petition is **GRANTED**.

Applicants remain under obligation to reply to the Final Office action within the time period set therein or as may be extended under 37 CFR 1.136(a) as no specific request to withdraw the Final rejection appears in the petition. The examiner is instructed to reconsider the rejection of record in view of this decision upon reply by applicants.

As there is no fee for this petition, the petition fee paid of $130.00 will be credited to applicants' Deposit Account No. 02-4035, as directed.

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

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600

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MAR 19 2002

Paper No. 9

Erin M. Dunston
P.O. Box 1404
Alexandria, Virginia 22313-1404

In re Application of Didier CANDAU Application No. 09/927,488 Filed: August 13, 2001 Attorney Docket No. 016800-457	: : DECISION GRANTING PETITION : TO RESET PERIOD FOR REPLY :

This is a decision on the petition filed on February 8, 2002, requesting that the shortened statutory period for reply set forth in the Office communication mailed on December 10, 2001 be reset to run from the date on which the Office communication was actually received at the correspondence address of record.

The petition is granted.

Petitioner provided a statement that the Office communication in question was received at the correspondence address of record on January 25, 2002. The petition was filed within two weeks of receipt of the Office communication. A substantial portion of the set reply period had elapsed on the date of receipt. Furthermore, the Office communication was mailed between October 13, 2001 and January 2, 2002, when delivery of mail from the Office to certain regions of the country was delayed.

Accordingly, the shortened statutory period that was originally set forth in the Office communication originally mailed on December 10, 2001 is hereby reset to run FROM THE RECEIPT DATE OF January 25, 2002.

Cecilia Tsang

Cecilia Tsang, Special Program Examiner,
Technology Center 1600
(703) 308-0254

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Paper No. 15

NIXON & VANDERHYE PC
1100 North Glebe Road
8TH Floor
Arlington, VA 22201-4714

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AUG -1 2003

OFFICE OF DIRECTOR
GROUP

In re Application of:	:	
KUBO *et al.*	:	DECISION ON PETITION
Serial No.: 09/927,547	:	TO WITHDRAW HOLDING
Filed: August 13, 2001	:	OF ABANDONMENT
Attorney Docket No.: 829-583	:	

This is a decision on the petition, filed January 14, 2003, to withdraw the holding of abandonment of the above-identified application. No fee is required for this petition.

The petition is **DISMISSED** as moot.

A notice of Allowance and Issue Fee Due (NOA) was mailed on August 26, 2002. A new NOA was mailed on January 28, 2003, and the statutory period for response was reset to run three months from the new mailing date. On April 25, 2003, a Request for Continued Examination (RCE) was filed.

Petitioner states that counsel did not receive the NOA mailed on August 26, 2002, and attests to the fact that a search of the file jacket and docket records indicates that the NOA was not received. The petition includes a copy of the docket record where the non-received NOA would have been entered had it been received and docketed. Petitioner further asserts that although no Notice of Abandonment has been received; however, it is assumed that the application was abandoned for failure to pay the issue fee.

A review of the written record indicates that a new NOA was properly re-mailed on January 28, 2003. The statutory period in which to pay the issue fee expired on April 28, 2003. The RCE was timely filed April 25, 2003, prior to the expiration of the period. As such, the application did not go abandoned.

Accordingly, the petition is dismissed.

The application file is being forwarded to the Technology Center 2800 support staff for processing the RCE. From there, the application will be sent to the examiner for continued examination.

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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EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

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FEB 03 2005

OFFICE OF PETITIONS

In re Application	:	
Malik, et al.	:	
Application No. 09/927,597	:	DECISION ON APPLICATION
Filed: August 10, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. 020552-007100US	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed December 20, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred sixty-three (163) days to one hundred seventy-four (174) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **one hundred seventy-four (174) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 22, 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 sixty-three (163) days. On December 20, 2004, Applicants timely[1] submitted the instant 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 one hundred seventy-four (174) days.

Applicants assert entitlement to a patent term adjustment of one hundred seventy-four (174) days on the basis that the PTO improperly assessed Applicants a delay of eleven (11) days for responding to a Notice to File Missing Parts mailed on October 4, 2001. Applicants assert that they timely filed a response on January 3, 2002, within the three month period pursuant to 37 C.F.R. 1.704(b).

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of zero one hundred sixty-three (163) days based on an adjustment for PTO delay of two hundred sixty-six (266) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delay of sixty-one (61), thirty-one (31), and eleven (11) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 11 days is at issue.

The adjustment of 11 days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on October 4, 2001. Applicants timely filed a complete response to this notice on January 3, 2002. As this was timely pursuant to 37 CFR 1.704(b), no applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one hundred seventy-four (174) days** (266 days of PTO delay and 92 days of applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

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[1] Applicants filed the application for patent term adjustment contemporaneous with the filing of the issue fee.

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
for

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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P.O. BOX 721120
SAN JOSE, CA 95172-1120

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AUG 1 5 2008

OFFICE OF PETITIONS

In re Patent No. 6,889,225 :
Issue Date: May 3, 2005 :
Application No. 09/927,599 :
Filed: August 9, 2001 :
Attorney Docket Number: 60409.300901 :

ON PETITION

This is a decision on the petition, filed July 14, 2008, under 37 CFR 1.182, requesting the issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

Since it is U.S. Patent and Trademark Office practice to assure mailing of all papers on the date indicated, there is a strong presumption that papers duly addressed and indicated as mailed, such as the Letters Patent in this application, are timely delivered to the addressee. To overcome this presumption, a verified statement with supporting evidence, such as any records which would disclose the receipt of other correspondence mailed from the U.S. Patent and Trademark Office on or about May 3, 2005, but fail to disclose receipt of the Letters Patent mailed on that date, should be promptly submitted. Further, copies of records on which receipt of the Letters Patent would have been entered had it been received are required.

However, if the loss of the Letters Patent was not the fault of the U.S. Patent and Trademark Office or if petitioner simply wishes to avoid overcoming the above-noted presumption, a petition may be filed under 37 CFR 1.182 accompanied by a petition fee of $400.00 requesting a duplicate Letters Patent. Upon receipt of the petition and petition fee, the request for a duplicate Letters Patent will be granted.

Petitioners state that the Letters Patent was received from the USPTO but has been subsequently lost. The petition fee in the amount of $400.00 has been applied.

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

The Office of Data Management is directed to issue a duplicate Letters Patent.

Telephone inquiries concerning this decision may be directed to the undersigned Senior Petitions Attorney at (571) 272-3212. Inquiries regarding the issuance of a duplicate Letters Patent may be directed to the Office of Data Management at (703) 308-9250.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

cc: Niomi Farmer (Fax – (571) 270-9753)

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OCT -7 2004

Paper No. 12

In re Application of	:
Catherine O'Neill	:
Application No. 09/27,606	: DECISION ON PETITION
Filed: August 21, 2001	:
For: Resealable Tab For	:
A Drinking Cup	:

This is a decision on the petition filed on July 29, 2004 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated August 20, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that this application is not abandoned because petitioner did not receive the Office letter in question. Petitioner has supported this allegation in a manner that satisfies the requirements for a petition to withdraw a holding of abandon based upon nonreceipt of Office correspondence as set forth in MPEP § 711.03(c). Based upon the showing submitted by petitioner, it is clear this application is not technically 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 to re-mail the Office letter dated August 20, 2003, together with a complete copy of the Notice of Allowability and all attachments thereto. The period for reply to the re-mailed Office letter will run from the date of re-mailing, and is subject to extensions of time pursuant to 37 CFR 1.136(a). In no event may the time for replying thereto extend more than six months from the date of re-mailing.

PETITION GRANTED

E. Rollins-Cross, Director
Technology Center 3700

Haight, Brown & Bonesteel, L.L.P.
6080 Center Drive
Suite 800
Los Angeles, CA 90045-1574

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LEVISOHN, BERGER & LANGSAM, LLP
805 THIRD AVENUE, 19TH FLOOR
NEW YORK, NY 10022

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OFFICE OF PETITIONS

In re Application of	:	
Alan Rojer	:	
Application No. 09/927,614	:	ON PETITION
Filing or 371(c) Date: 08/10/2001	:	
Attorney Docket Number:	:	
1087.251	:	

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), June 6, 2006[1].

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely reply to the Notoce to File Corrected Application Papers ("Notice"), mailed September 14, 2001. The Notice set a two (2) month period for reply. Extensions of time under 37 CFR 1.136(a) were available. No reply having been received, the application became abandoned on November 15, 2001. A Notice of Abandonment was mailed February 2, 2004.

Applicant files the instant petition and substitute drawings in response to the Notice. Accordingly, the petition is granted.

This application is being forwarded to the Office of Initial Patent Examination for processing of the substitute drawings.

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

Derek L. Woods
Attorney
Office of Petitions

[1] Applicant asserts that a petition to revive the application was filed February 18, 2004; however, a review of the petition documents reveal that, while the Certificate of Transmission was executed by Ms. Wanda Ruggiera, the petition does not include a statement which attests on a personal knowledge basis to the previous timely mailing or transmission. See, 37 CFR 1.8(b)(3).

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David M. Kettner
Quarles & Brady LLP
1 South Pinckney Street
P O Box 2113
Madison WI 53701-2113

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OFFICE OF PETITIONS

In re Application of
Triplett et al.
Application No. 09/927,616
Filed: August 10, 2001
Attorney Docket No. 960296.97273
For: BIOLOGICAL CONTROL OF CROWN GALL DISEASE

ON PETITION

This decision on the petition under 37 CFR 1.78(a)(6), filed December 1, 2003 (certificate of mailing date November 25, 2003.

The petition is **GRANTED.**

The instant petition requests acceptance of a delayed claim of benefit of provisional application no. 60/224,929, filed on August 11, 2000.

Generally, a claim of benefit under 35 U.S.C. 119(e) is required to be filed during the pendency of the nonprovisional application that seeks to claim the invention disclosed in an earlier-filed provisional application.[1] However, when the nonprovisional application is filed on or after November 29, 2000, as is in the instant case, the claim of benefit must be filed **not merely** during the pendency of the nonprovisional application, **but** within either 4 months of its filing date, or 16 months of the filing date of the provisional application, whichever is later.[2]

The claim of benefit submitted with the instant petition is filed during the pendency of the nonprovisional application, but subsequent to December 11, 2001.[3] Such a delayed claim of benefit under 35 U.S.C. 119(e) may be accepted under a petition that includes:

(1) The claim of benefit (in the form of a specific reference to the provisional application) in an application data sheet or in the first sentence of the

---

[1] Assuming the following conditions are also met: (1) the nonprovisional application is filed within 12 months of the filing date of the provisional application; (2) the provisional application is entitled to a filing date, has at least 1 common inventor as that named in the nonprovisional application, and discloses that common inventor's invention which is claimed in at least 1 claim of the nonprovisional application; (3) the basic filing fee for the provisional application has been paid. 35 U.S.C. 119(e)(1); 37 CFR 1.78(a)(4).

[2] 37 CFR 1.78(a)(5)(ii). In the instant case, the claim for benefit must be filed no later than 12/11/01 (16 months after the 08/11/00 filing date of the provisional applications), which is later than 12/10/01 (4 months after the 8/10/01 filing date of the instant nonprovisional application).

[3] See *supra* note 2.

specification following the invention title, unless previously submitted;[4]

(2) The $1,330 surcharge set forth in 37 CFR 1.17(t);[5]

(3) A statement that the entire delay (between the time the claim of benefit was due and the filing of the claim) was unintentional.[6]

The petition meets the above requirements and is thus granted.

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

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 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 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.

This application is being forwarded to Technology Center Art Unit 1638 for further examination and for processing and consideration by the Examiner of applicant's claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(4) and (5) for the benefit of priority to the prior-filed provisional application.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney E. Shirene Willis at (703) 308-6712.

Brian Hearn, for

Charles Pearson
Director, Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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[4] 37 CFR 1.78(a)(5)(iii), (6)(I). The instant petition is accompanied by an amendment that includes, in the 1st sentence of the specification, a reference to the claim of benefit of the provisional application.

[5] 37 CFR 1.78(a)(6)(ii). The fee was charged to Deposit Account No. 17-0055 on December 2, 2003 as authorized in the petition.

[6] 37 CFR 1.78(a)(6)(iii); contained in petition.

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ROPES & GRAY LLP
PATENT DOCKETING 39/361
1211 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8704

In re Application of

PRITCHARD, Andrew H.
Application No. 09/927,628
Filed: August 10, 2001
Attorney Docket No. **CF/ 024**

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 February 19, 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. 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 Laurence Rogers on behalf of all attorneys of record who are associated with customer No. 64558. All attorneys/agents associated with the Customer Number 64558 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.

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **ANDREW H. PRITCHARD**
9 SYLVESTER COURT
NORWALK, CT 06855

cc: **DEAN P. ALDERUCCI**
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

UNITED STATES PATENT AND TRADEMARK OFFICE

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

November 6, 2006

Fred L. Braun
OBLON, SPIVAK, McCLELLAND, MAIER & NEUSTADT, P.C.
1940 Duke Street
Alexandria, VA 22314

Patent No.: 7113213 B2
Application No.: 09/927632
Inventor(s): **Yoshiyuki Matsunaga, et al.**
Issued: **September 26, 2006**
Title: **IMAGE SYSTEM, SOLID-STATE IMAGING SEMICONDUCTOR INTEGRATED CIRCUIT DEVICE USED IN THE IMAGE SYSTEM, AND DIFFERENCE OUTPUT METHOD USED FOR THE IMAGE SYSTEM**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail:	Mail Stop PETITIONS Commissioner for Patents Post Office Box 1450 Alexandria, VA 22313-1450
By hand:	Customer Service Window Mail Stop Petitions Randolph Building 401 Dulany Street Alexandria, VA 22314
By fax:	(703) 872-9306 ATTN: Office of Petitions

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

A certificate of correction will be issued to correct the remaining error mentioned in your request.

Virginia Tolbert
For Cecelia Newman
Decisions & Certificate of Correction Branch
(703) 305-8309 or (703) **308-9390 ext 113**

vt

MAILED
FROM DIRECTOR'S OFFICE
MAY 0 4 2006
TECHNOLOGY CENTER 3600

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P.O. Box 1450
Alexandria, VA 22313-1450
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Milord A. Keshishian
10880 Wilshire Blvd. Suite 2070
Los Angeles, CA 90024

In re Application of	:	
Michael A. Wise	:	**DECISION ON PETITION**
Application No. 09/927,650	:	**TO WITHDRAW THE**
Filed: August 10, 2001	:	**HOLDING OF ABANDONMENT**

For: TIE-DOWN SYSTEM AND METHOD

This is a decision on the Petition to Withdraw the Holding of Abandonment filed in the United States Patent and Trademark Office on July 18, 2005.

The petition is **GRANTED** in view of the following evidence of timely filing:

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____.

☒ Certificate of Mailing/Transmission signed on February 13, 2004, 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 _____.

☐ Originally sent response, filed_____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for withdrawal of the abandonment and then to the examiner for prompt action.

KENNETH J. DORNER
SPECIAL PROGRAMS EXAMINER
TECHNOLOGY CENTER 3600

RAR/js: 8/24/05

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)
6546777	2003-04-15	09927660	2001-08-10	D-1140

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	/Maurice E. Gauthier/	Date (YYYY-MM-DD)	2007-06-04
Name	Maurice E. Gauthier	Registration Number	20798

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. 6546777
Issue Date: April 15,2003
Application No. 09927660
Filed: August 10,2001
Attorney Docket No. D-1140

:

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

:

This is a decision on the electronic petition, filed June 4,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 4,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
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Sandia Corporation
P.O. Box 5800
MS-0161
Albuquerque, NM 87185-0161

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JUL 27 2005

OFFICE OF PETITIONS

In re Application of	:
Timothy J. Tautges, et. al.	:
Application No. 09/927,691	: DECISION ON PETITION
Filed: August 8, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. SD-6594.1	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed March 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on August 8, 2001, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/226,445, which was filed on August 17, 2000, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

As authorized, the $1,370 fee required by 37 CFR 1.78(a)(6)(ii) has been charged to petitioner's deposit account.

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

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

---

[1] *Note* 37 CFR 1.121

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

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

Any questions concerning this matter may be directed to Andrea Smith at (571) 272-3226.

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. 4

Supervisor, Patent Prosecution Services
PIPER MARBURY RUDNICK & WOLFE LLP
1200 Nineteenth Street, N.W.
Washington, DC 20036-2412

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DEC 17 2001

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Brady et al. :
Application No. 09/927,701 :
Filed: July 30, 2001 :
Attorney Docket No. 4000-102-30CONT :

This is a decision on the petition filed October 11, 2001, to accord the above-identified application a filing date of July 30, 2001, instead of August 1, 2001.

The petition is **granted**.

The application was filed on July 30, 2001. At that time, petitioner obtained a stamped receipt indicating receipt of the application on July 30, 2001. Apparently, due to an error by an employee of the Patent and Trademark Office, the filing date was incorrectly entered as August 1, 2001. The correct filing date for the application is July 30, 2001.

The Office apologizes for any inconvenience caused to applicants.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of July 30, 2001.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN - 8 2005

HAMILTON, BROOK, SMITH &
REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

In re Application of Junming Le, Jan Vilcek, Peter Daddona, John Ghrayeb, David Knight and Scott Siegel Serial No.: 09/927,703 Filed: August 10, 2001 Attorney Docket No.: 0975.1005-013	: PETITION TO MAKE SPECIAL

This is in response to applicants' petition filed May 26, 2005, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on the age of the applicant. No fee is required for this petition.

Applicants have satisfied the provisions set forth in M.P.E.P. 708.02, IV. 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 William Dixon by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission to the general Office facsimile number.

William Dixon
Special Program Examiner
Technology Center 1600

SPE: Y. Chan

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/11/07

TO SPE OF : ART UNIT 1644

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/927,703 Patent No.: 7192584

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: _____

Christina Chan — SPE

1644 — Art Unit

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United States Patent and Trademark Office
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DEAN A. CRAINE, P.S.
SUITE 140
400-112TH AVENUE, NE
BELLEVUE, WA 98004

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JUN 1 7 2004

OFFICE OF PETITIONS

In re Application of	:	
Leen, Monte A.	:	
Application No. 09/927,707	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. LEEM 143	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 31, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the formal drawings, the issue fee and the publication fee in a timely manner in reply to the Notice of Allowability and Notice of Allowance mailed December 24, 2003. Accordingly, the above-identified application became abandoned on March 25, 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 the Publishing Division for processing into a patent.

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

SPE J. Seidleck

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 09/927,731

Paper No.: _____

DATE : 7/29/05

TO SPE OF : ART UNIT 1711

SUBJECT : Request for Certificate of Correction on Patent No.: 6746779

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.

Lamonte M. Newsome
Certificates of Correction Branch
Tel. No. 703-305-8309

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

1711
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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MEDLEN & CARROLL
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

COPY MAILED
APR 27 2004
OFFICE OF PETITIONS

In re Application of	:	
Claude P. Selitrennikoff et al	:	
Application No. 09/927,734	:	NOTICE
Filed: August 10, 2001	:	
Attorney Docket No. MYCOLOGX-06279	:	

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 Appointment of Associate Attorneys and Agents filed April 15, 2004 is noted and made of record.

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

This application file is being referred 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

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BEYER WEAVER & THOMAS LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

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MAR 17 2005

OFFICE OF PETITIONS

In re Application of
Joseph Kaminkow
Application No.09/927,742
Filed: August 10, 2001
Attorney Docket No.
Title of Invention: ROTOR SKEW METHODS FOR PERMANENT MAGNET MOTORS

ON PETITION

This is a decision on the petition under 37 CFR §1.137(a), filed June 10, 2004 to revive the above-identified application.

This application became abandoned for failure to timely submit the a response to the Office Action mailed on August 20, 2003. The finality of the action was withdrawn on October 14, 2003. The Office Action set a three month shortened statutory period for reply. Extensions of time were available under 37 CFR 1.136(a). Accordingly, this application was held abandoned on November 21, 2003. A Notice of Abandonment was mailed May 28, 2004.

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

This application is being forwarded to Technology Center 3700 for review of the amendment submitted with the petition.

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

Charlema R. Grant
Petition 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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THELEN REID & PRIEST LLP
SONIC
P.O. BOX 640640
SAN JOSE CA 95164-0640

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OCT 0 3 2006

OFFICE OF PETITIONS

In re Application of

Erik W. Rasmussen
Application No. 09/927,771
Filed: August 10, 2001
Attorney Docket No. SNX-0028

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 30, 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 request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

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

Telephone inquiries concerning this decision should be directed to Charles Smoot at 571-272- 3299.

for David Bucci
Petitions Examiner
Office of Petitions

cc: L. Grant Foster
Holland & Hart LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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WASHINGTON, DC 20231
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#10

Paul R. Morico
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, TX 77002-4995

MAILED

JUN 24 2003

Office of the Director
Group 3600

In re application of
Donald H. Michel
Application No. 09/927,829
Filed: August 10, 2001
For: APPARATUS AND METHOD FOR GRAVEL PACKING

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on April 16, 2003, and the renewed request filed on May 1, 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 requests to withdraw as attorney is not accepted in the above-identified application because the request lacks conditions B) and C) above.

As to condition B), the following reasons apply for the request filed on April 16, 2003 or the request filed on May 1, 2003. In the request filed on April 16, 2003, the reason for withdrawal is "due to a conflict of interest." This reason does not fall within one of the proper reasons for withdrawal listed under 37 CFR 10.40. In the renewed request filed on May 1, 2003, there is no indication in the file record of the assignee being the "client." 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.

As to condition C), an office action was mailed January 17, 2003. Therefore, the expiration date for a response is July 17, 2003 which is less than 30 days from decision of this petition to request withdrawal as attorney.

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

KJD/dxn: 6/23/03

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JUL 13 2009

OFFICE OF PETITIONS

MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE, 32ND FLOOR
CHICAGO, IL 60606

In re Application of	:	
Andrew Welcher et al	:	
Application No. 09/927,850	:	DECISION ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 99,372-F	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 11, 2009, 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.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed January 6, 2005, and no extension of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on March 7, 2005. See MPEP 1215.04.

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 $2350 extension of time submitted with the petition on June 11, 2009 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a

grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lack items (3).

There are three periods to be considered during the evaluation of a petition under 37 CFR 1.137(b):

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

(2) the delay in filing an initial petition pursuant to 37 CFR 1.137(b) to revive the application; and

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

Currently, the delay has not been shown to the satisfaction of the Director to be unintentional for periods (1) and (2).

As to Period (1):

The patent statute at 35 U.S.C. § 41(a)(7) authorizes the Director to revive an "unintentionally abandoned application." The legislative history of Public Law 97-247 reveals that the purpose of 35 U.S.C. § 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. §§ 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion, stating that "[u]nder this section a petition accompanied by either a fee of $500 or a fee of $50 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. The revival of an intentionally abandoned application is antithetical to the meaning and intent of the statute and regulation.

35 U.S.C. § 41(a)(7) authorizes the Director to accept a petition "for the revival of an unintentionally abandoned application for a patent." As amended December 1, 1997, 37 CFR 1.137(b)(3) provides that a petition under 37 CFR 1.137(b) must be accompanied by a statement that the delay was unintentional, but provides that "[t]he Commissioner may require additional information where there is a question whether the delay was unintentional." Where, as here, there is a question whether the initial delay was unintentional, the petitioner must meet the burden of establishing that the delay was unintentional within the meaning of 35 U.S.C. §

41(a)(7) and 37 CFR 1.137(b). See In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989); 37 CFR 1.137(b). Here, in view of the inordinate delay (4 years) in resuming prosecution, there is a question whether the entire delay was unintentional. Petitioner should note that the issue is not whether some of the delay was unintentional by any party; rather, the issue is whether the entire delay has been shown to the satisfaction of the Director to be unintentional.

The question under 37 CFR 1.137(b) for period (1) is whether the delay on the part of the party having the right or authority to reply to avoid abandonment (or not reply) was unintentional. Accordingly, any renewed petition must clearly identify the party having the right to reply to avoid abandonment on March 7, 2005. That party, in turn must explain what effort(s) was made to further reply to the outstanding Office action and, further, why no reply was filed. If no effort was made to further reply, then that party must explain why the delay in this application does not result from a deliberate course of action (or inaction). Likewise, as Kevin E. Noonan was counsel of record at the time of abandonment, Kevin E. Noonan should explain why this application became abandoned while it was under his control and what efforts he made to further reply of itself and with whom this matter was discussed outside of Mr. Noonan. Copies of any correspondence relating to the filing, or to not filing a further reply to the outstanding Office action are required from responsible person(s), Kevin E. Noonan and whoever else was involved with this application at the time of abandonment. Statements are required from any and all persons responsible for handling this application, and the responsible person(s) having firsthand knowledge of the circumstances surrounding the lack of a reply to the outstanding Office action. As the courts have made clear, it is pointless for the USPTO to revive a long abandoned application without an adequate showing that the delay did not result from a deliberate course of action. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005); Lumenyte Int'l Corp. v. Cable Lite Corp., Nos. 96-1011, 96-1077, 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished) (patents held unenforceable due to a finding of inequitable conduct in submitting an inappropriate statement that the abandonment was unintentional).

As to Period (2):

Likewise, where the applicant deliberately chooses not to seek or persist in seeking the revival of an abandoned application, or where the applicant deliberately chooses to delay seeking the revival of an abandoned application, the resulting delay in seeking revival of the abandoned application cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See MPEP 711.03(c).

The language of both 35 U.S.C. § 41(a)(7) and 37 CFR 1.137(b) are clear and unambiguous, and, furthermore, without qualification. That is, the delay in filing the reply during prosecution, as well as in filing the petition seeking revival, must have been, without qualification, "unintentional" for the reply to now be accepted on petition. The Office requires that the entire delay be at least unintentional as a prerequisite to revival of an abandoned application to prevent abuse and injury to the public. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 7 (1982), reprinted in

1982 U.S.C.C.A.N. 771 ("[i]n order to prevent abuse and injury to the public the Commissioner . . . could require applicants to act promptly after becoming aware of the abandonment"). The December 1997 change to 37 CFR 1.137 did not create any new right to overcome an intentional delay in seeking revival, or in renewing an attempt at seeking revival, of an abandoned application. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53160 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 87 (October 21, 1997), which clearly stated that any protracted delay (here, over 4 years) could trigger, as here, a request for additional information. As the courts have since made clear, a protracted delay in seeking revival, as here, requires a petitioner's detailed explanation seeking to excuse the delay as opposed to USPTO acceptance of a general allegation of unintentional delay. See Lawman Armor v. Simon, 2005 U.S. Dist. LEXIS 10843, 74 USPQ2d 1633, at 1637-8 (DC EMich 2005); Field Hybrids, LLC v. Toyota Motor Corp., 2005 U.S. Dist. LEXIS 1159 (D. Minn Jan. 27, 2005) at *21-*23. Statements are required from any and all persons handling this application and the responsible person(s) having firsthand knowledge of the circumstances surrounding the protracted delay, after the abandonment date, in seeking revival.

As noted in MPEP 711.03(c)(II), subsection D, in instances in which such petition was not filed within 1 year of the date of abandonment of the application, applicants should include:

> (A) the date that the applicant first became aware of the abandonment of the application; and
> (B) a showing as to how the delay in discovering the abandoned status of the application occurred despite the exercise of due care or diligence on the part of the applicant.

In either instance, applicant's failure to carry the burden of proof to establish that the "entire" delay was "unavoidable" or "unintentional" may lead to the denial of a petition under 37 CFR 1.137(b), regardless of the circumstances that originally resulted in the abandonment of the application. See also New York University v. Autodesk, 2007 U.S. DIST LEXIS, U.S.District LEXIS 50832, *10 -*12 (S.D.N.Y. 2007)(protracted delay in seeking revival undercuts assertion of unintentional delay).

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

To expedite consideration, petitioner may wish to contact the undersigned regarding the filing of the renewed petition under 37 CFR 1.137(b).

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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CHICAGO, IL 60606

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SEP 28 2009

OFFICE OF PETITIONS

In re Application of	:	
Andrew Welcher et al	:	
Application No. 09/927,850	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 99,372-F	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed August 18, 2009, 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.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed January 6, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on March 7, 2006. *See* MPEP 1215.04.

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

The Office records show the appeal brief and the appeal brief fee has not been received. This petition can not be treated until the appeal brief and the $540 appeal brief fee is received.

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

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

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

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

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

Irvin Dingle
Petitions Examiner
Office of Petitions

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300 S. WACKER DRIVE
32ND FLOOR
CHICAGO IL 60606

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OFFICE OF PETITIONS

In re Application of	:DECISION ON PETITION
Andrew Welcher et al.	:UNDER 37 CFR 1.78(a)(3)
Application No. 09/927,850	: and
Filed: August 10, 2001	:UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 077940.0102	:

This is a decision on the petition filed August 18, 2009, under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed non-provisional application 09/724,860 filed November 8, 2000, and under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application 60/169,720 filed December 8, 1999, which are set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) 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 Director may require additional information where there is a question whether the delay was unintentional.

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the priority claim is not in the proper form and must be in an amendment, not physically part of any other document as the response and, as such, does not comply with 37 CFR 1.121, 1.52, or 1.4(c). Note that 37 CFR 1.121 states that amendments are made by filing a paper, in compliance with § 1.52, directing that specified amendments be made. The pertinent section of 37 CFR 1.52 states that the claim (in this case, the claim for priority), must commence on a separate physical sheet. 37 CFR 1.4(c) states that each distinct

subject must be contained in a separate paper since different matters may be considered by different branches of the United States Patent and Trademark Office.

Additionally, the reference to add the prior-filed application should not include an incorporation by reference statement. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition and either a Supplemental Application Data Sheet (signed in compliance with 37 CFR 1.33(b) and in compliance with 37 CFR 1.76) or a substitute amendment (complying with the provisions of 37 CFR 1.121 or 37 CFR 1.76(b)(5)) to correct the above matters are required.

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

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

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

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

Any questions concerning this matter may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.

Anthony Knight
Supervisor
Office of Petitions

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HULBERT & BERGHOFF LLP
300 S. WACKER DRIVE, 32ND FLOOR
CHICAGO, IL 60606

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OFFICE OF PETITIONS

In re Application of	:	
Andrew Welcher et al	:	
Application No. 09/927,850	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 99,372F	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed November 24, 2009, 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 continuing application under 37 CFR 1.53(b); (2) the petition fee of 1620; and (3) a proper statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application.

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

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Application of
Bamnolker et al.
Application No. 09/927,863
Filed: 10 August, 2001
Atty's Docket No. 10200/101

: DECISION GRANTING PETITION

This is a decision on the petition filed on 12 October, 2001, requesting that the above-identified application, including one (1) sheet of drawings containing Figures 6-7, be accorded a filing date of 10 August, 2001.

On 10 August, 2001, the application was filed.

On 14 September, 2001, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 10 August, 2001, but that Figures 6 and 7 described in the specification appeared to have been omitted.

In response, on 12 October, 2001, one (1) sheet of drawings containing Figures 6 and 7, the present petition, and a petition fee were filed. Petitioners argue that one (1) sheet of drawings containing Figures 6 and 7 was filed with the other application papers on 10 August, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied on 12 October, 2001. The postcard receipt shows an Office date stamp of 10 August, 2001, and the above-identified application number, and acknowledges receipt, *inter alia*, of 4 sheets of drawings. Petitioners request that the application, including the one (1) sheet of drawings containing Figures 6 and 7, be accorded a filing date of 10 August, 2001.

Application No. 09/927,863

A review of the record reveals that three (3) sheets of drawings, containing Figures 1-5 are located among the application papers deposited on 10 August, 2001. However, the evidence is convincing that the application papers deposited on 10 August, 2001, included one (1) sheet of drawing containing Figures 6 and 7 as described in the specification, which was subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawing containing Figures 6 and 7 as described in the specification, is entitled to a filing date of 10 August, 2001.

The "Notice" mailed on 14 September, 2001, is vacated.

In view of the above, the petition is granted. The petition fee will be refunded to counsel's deposit account, No. 23-1925.

The application will be processed and examined using the one (1) sheet of drawing containing Figures 6 and 7 supplied on 12 October, 2001.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 10 August, 2001, using the application papers filed on 10 August, 2001, and the one (1) sheet of drawing containing Figures 6 and 7, supplied on 12 October, 2001.

Telephone inquires should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.

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

#6
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
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AUG 12 2003

OFFICE OF THE DIRECTOR
TC 3600

Harold Paul Odom
9 Orchard Lane
Hawthorne Woods, IL 60047

In re Application of
Harold Paul Odom
Application No. 09/927,870
Filed: August 9, 2001
For: VEHICLE FRONT SUSPENSION SYSTEM

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to applicant's communication, filed in the United States Patent and Trademark Office on July 11, 2003. This communication is being treated as a petition to withdraw the holding of abandonment. There is no fee for this petition.

The petition is **DISMISSED,** pending submission of a renewed petition.

A review of the file record indicates that the application was held abandoned for failure to timely respond to a Restriction Requirement mailed November 4, 2002.

The records of the Office indicate that the Restriction Requirement was mailed to applicant at the address of record at that time on November 4, 2002. There is a strong presumption that mail properly addressed and delivered to the United States Postal Service was in fact delivered to the addressee. An allegation that an Office communication was not received may be considered in a formal petition for the withdrawal of the holding of abandonment, in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513. However, the presumption that the Office communication was delivered to applicant may be overcome by a showing that the communication was not, in fact, received as indicated below.

Applicant's statements of non-receipt should include a statement by him, and by anyone else at applicant's correspondence address, who would have handled the Office communication, and include any available documentary evidence of mail received, covering a reasonable period after the date of the Office communication, to show non-receipt of the communication in question. Copies of records on which the receipt date of the Office communication would have been entered had it been received, (*e.g.*, a copy of the outside of the file maintained by applicant), are required if available. Also, a showing of any docket records or other method which would serve as a reminder of a response due date should be submitted. Whatever method applicant uses as a reminder, and submits in response to this decision should be adequately explained. Also, a statement is required that a search of the file maintained by applicant, or any other location where correspondence from the USPTO is kept, fails to find a copy of the Office communication in question. Finally, applicant must state that he was in fact at

the correspondence address of record at the time the Notice of Non-Compliant Amendment would have been received.

Any such exhibits should be submitted as part of statement(s) showing that no Office communication was ever received.

While some of the above items have been addressed in applicants petition, the remainder must be addressed before any such petition can be granted.

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, and inquiries relative to this decision may be directed to Special Programs Examiner Steven Meyers at (703) 308-3868. No fee is required for such a renewed petition.

Steven N. Meyers, Special Program Examiner
Patent Technology Center 3600
(703) 308-3868

SM: 8/11/03

UNITED STATES 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. 10

H PAUL ODOM
9 ORCHARD LANE
HAWTHORN WOODS IL 60047

COPY MAILED
JUN 07 2004
OFFICE OF PETITIONS

In re Application of :
Harold Paul Odom :
Application No. 09/927,870 : DECISION ON PETITION
Filed: August 9, 2001 :
Title: Vehicle Front Suspension :
System

This is a decision on the petition filed on February 9, 2004, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704. There is no fee for a renewed petition.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action, mailed November 4, 2002, which set a shortened statutory period for reply of one (1) month. No extensions of time for reply under the provisions of 37 CFR 1.136(a) were obtained. No response having been received, the above-identified application became abandoned on December 5, 2002. Applicant filed a petition to withdraw the holding of abandonment on July 11, 2003. However, that petition was dismissed in a decision mailed on August 12, 2003. A courtesy Notice of Abandonment was mailed on August 20, 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).

The instant petition lacks item (1), the required reply.

On renewed petition, petitioner must submit a reply in response to the Office action mailed November 4, 2002. A copy of that Office action is enclosed for petitioner's convenience.

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

Enc: Office action mailed November 4, 2002 (4 pages)

UNITED STATES 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. 12

H PAUL ODOM
9 ORCHARD LANE
HAWTHORN WOODS IL 60047

COPY MAILED

OCT 20 2004

OFFICE OF PETITIONS

In re Application of Harold Paul Odom Application No. 09/927,870 Filed: August 9, 2001 Title: Vehicle Front Suspension System	: : : : :	DECISION ON PETITION

This is a decision on the renewed petition filed on August 12, 2004, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a response to the non-final Office action, mailed November 4, 2002, which set a shortened statutory period for reply of one (1) month. No extensions of time for reply under the provisions of 37 CFR 1.136(a) were obtained. No response having been received, the above-identified application became abandoned on December 5, 2002. Applicant filed a petition to withdraw the holding of abandonment on July 11, 2003. However, that petition was dismissed in a decision mailed on August 12, 2003. A courtesy Notice of Abandonment was mailed on August 20, 2003. Applicant filed a petition to revive under 37 CFR 1.137(b) on February 9, 2004. However, the petition lacked the required reply.

With the instant renewed petition, petitioner submitted the required reply in the form of an election in response to the restriction requirement.

The application file is being forwarded to Group Art Unit 3611 for consideration of the election filed August 12, 2004.

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

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

MAILED
JUN 26 2007
Technology Center 2100

In Re Application:
Yehuda Afek
Appl No. 09/929,877
Filed: August 14, 2001
Attorney Docket No.: 0103376-00003
For: METHODS AND APPARATUS FOR PROTECTING AGAINST OVERLOAD CONDITIONS ON NODES OF A DISTRIBUTED NETWORK.

WITHDRAW FROM ISSUE
FEE NOT PAID

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(a).

The above-identified application is withdrawn from issue before payment of the issue fee to determine patentability.

Patent and Trademark Office records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a specified Deposit Account.

The application is being forwarded to the examiner for action.

Paul Sewell
Acting Director, Technology Center 2100
Computer Architecture, Software
And Electronic Commerce

OIPE JC88
NOV 04 2004
PATENT & TRADEMARK OFFICE

PET DEC 1733 JFW

PTO/SB/83 (09-04)
Approved for use through 11/30/2005. OMB 0651-0035
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	09/927,890
Filing Date	08/10/2001
First Named Inventor	Jacino
Art Unit	1733
Examiner Name	Corcoran
Attorney Docket Number	1714-40

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

Approved 2/10/05
JMStone
Jacqueline M. Stone, Director
Technology Center 1700

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

- [ ] all the attorneys/agents of record.
- [ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- [ ] the attorneys/agents associated with Customer Number [ ]

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

The reasons for this request are: JOINT INVENTORS ARE UNABLE TO REACH AGREEMENT WITH RESPECT TO CONTINUED PROSECUTION OF THIS APPLICATION. COPIES OF ALL PAPERS AND PROPERTY TO WHICH THEY ARE ENTITLED HAVE BEEN FORWARDED TO APPLICANTS.

CORRESPONDENCE ADDRESS

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

[ ] The address associated with Customer Number: [ ]

OR

[X] Firm *or* Individual Name	Gerald Jacino (first named inventor (MPEP 403)				
Address	241 Farhan Lane				
City	North Babylon	State	NY	Zip	11703
Country	USA				
Telephone	631-231-5222	Fax			
Signature	M Arthur Auslander				
Name	M Arthur Auslander	Registration No.	18376		
Date	10/29/2004	Telephone No.	718-543-0266		

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

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HELLER EHRMAN, LLP
4350 LA JOLLA VILLAGE DRIVE, 7TH FLOOR
SAN DIEGO, CA 92122

COPY MAILED

AUG 14 2008

OFFICE OF PETITIONS

In re Application of
TULLY, et al.
Application No. 09/927,914
Filed: August 10, 2001
Attorney Docket No. 1314.2004-001

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 10, 2008.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to **HELLER EHRMAN, LLP** has been revoked by the assignee of the patent application on July 31, 2008. 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: DON J. PELTO
SHEPPARD MULLIN RICHTER & HAMPTON, LLP
1300 I STREET NW, 11TH FLOOR EAST
WASHINGTON, DC 20005

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

SHUMAKER & SIEFFERT PA
8425 SEASONS PARKWAY
SUITE 105
ST. PAUL MN 55125

COPY MAILED

APR 1 7 2002

OFFICE OF PETITIONS

In re Application of :
Ludwig, et al. :
Application No. 09/927,920 : DECISION REFUSING STATUS
Filed: August 10, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 1017-015US01 :
Title: PRODUCT IDENTITY :
PRESERVATION AND TRACING

This is in response to paper titled "Affidavit", filed January 16, 2002 (Certificate of Mailing dated December 28, 2001), which is being treated as a petition under 37 CFR 1.47(a).

The petition under 37 CFR 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 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).

The above-identified application was filed on August 10, 2001, without an executed oath or declaration. Accordingly, on September 28, 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 reply and paid the surcharge for late filing of the declaration. To make timely this reply, applicant purchased a one month extension of time. Rule 47 applicant's reply consisted of an affidavit by Peter M. Reyes, Jr., attorney for Cargill, Inc. In the affidavit, attorney Reyes detailed how on two occasions an Assignment and Declaration/Power of Attorney were forwarded to inventor Nelson for his signature. In addition, the affidavit stated that Mr. Nelson has to date not returned the forms.

A grantable petition under 37 CFR 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 CFR 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 inventors' review. The affidavit only states that a copy of the declaration and assignment papers were forwarded for signature. Requiring that an inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted "ensures that the inventor is apprised of the application to which the oath or declaration is directed."[1]

As applicant did not submit the required $130 fee for a petition under 37 CFR 1.47(a), the fee has been charged to Deposit Account No. 50-1778, as authorized.

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

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

[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

SHUMAKER & SIEFFERT PA
8425 SEASONS PARKWAY
SUITE 105
ST. PAUL MN 55125

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AUG 3 0 2002

OFFICE OF PETITIONS

In re Application of
Ludwig, et al.
Application No. 09/927,920
Filed: August 10, 2001
Attorney Docket No. 1017-015US01
Title: PRODUCT IDENTITY
PRESERVATION AND TRACING

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 June 24, 2002 (Certificate of Mailing dated June 17, 2002).

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on August 10, 2001, without an executed oath or declaration. Accordingly, on September 28, 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.

On January 16, 2002 applicant filed the a petition under 37 CFR 1.47(a) and paid the surcharge for late filing of the declaration. To make timely this reply, applicant purchased a one month extension of time. Rule 47 applicant's reply consisted of an affidavit by Peter M. Reyes, Jr., attorney for Cargill, Inc. In the affidavit, attorney Reyes detailed how on two occasions an Assignment and Declaration/Power of Attorney were forwarded to inventor Nelson for his signature. In addition, the affidavit stated that Mr. Nelson has to date not returned the forms.

A grantable petition under 37 CFR 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 CFR 1.63; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The January 16, 2002 petition was dismissed in a decision mailed on April 17, 2002 because petitioner was not successful in showing that the entire application papers had been sent to the nonsigning inventor for his review. However, the instant petition included an affidavit from Reyes stating that the entire application papers were forwarded to nonsigning inventor Nelson for his review on May 13, 2002. No response from Nelson has been received.

While applicant has not supplied a statement of the last known address of the non-signing inventors, the address listed on the declaration is assumed to be the last known address. Applicant must notify this Office if this is not the last known address of non-signing inventor Nelson.

The declaration filed January 16, 2002 and the instant petition has been found to be in compliance with 37 CFR 1.47(a).

The application is hereby accorded Rule 1.47 status.

As provided in 37 CFR 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 file is being forwarded to the Office of Initial Patent Examination for completion of 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

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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FROM DIRECTORS OFFICE

JAN 1 0 2006

TECHNOLOGY CENTER 3600

FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
SUITE 3800
MILWAUKEE, WI 53202-5308

In re application of
Bradley C. Squires et al.
Application No. 09/927,946
Filed: August 10, 2001

For: CONTROL SYSTEM AND METHOD FOR AN EQUIPMENT SERVICE VEHICLE

: DECISION ON PETITION
: FOR THE ACCEPTANCE
: OF LOST CORRESPONDENCE

This is in response to the Petition To Accept Lost Correspondence under 37 CFR. 1.10(e) filed on July 26, 2005. This petition is being considered under 37 CFR 1.181 since 37 CFR 1.10(e) only applies in situations in which the correspondence at issue was lost in toto (i.e., the entire correspondence was not delivered to the Office), see MPEP 513 VII. There is no fee required for this petition.

The petition is **GRANTED**.

Applicants' petition indicates that an information disclosure statement was filed on June 23, 2004 which included copies of twenty four documents that were either foreign patent documents or non-patent literature documents and that fourteen of these documents were not considered by the USPTO due to non-receipt by the examiner. Applicants' petition includes a copy of the fourteen missing documents as well as a post card receipt which indicates that an information disclosure statement and twenty four references were received by the Office. The post card receipt bears the Patent Office stamp of June 23, 2004. The post card receipt provides sufficient evidence that all twenty four documents were filed.

The application is being forwarded to the examiner to consider the fourteen documents listed on the information disclosure statement filed on June 23, 2004 which were not originally received by the Office but lost after receipt.

Donald T. Hajec, Director
Technology Center 3600
(571) 272-5150

DTH/bkg: 12/20/05

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FOLEY & LARNDER LLP
777 EAST WISCONSIN AVE
SUITE 3800
MILWAUKEE WI 53202-5308

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MAY 1 0 2006
OFFICE OF PETITIONS

In re	:
Squires, et al.	: DECISION ON APPLICATION
Application No. 09/927,946	: FOR PATENT TERM ADJUSTMENT
Filed: August 10, 2001	: AND
Patent No. 7,024,296	: NOTICE OF INTENT TO ISSUE
Issued: April 4, 2006	: CERTIFICATE OF CORRECTION

This decision is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT", filed March 27, 2006, notifying the Office of an error in Patentees' favor in the determination of patent term adjustment under 35 U.S.C. 154(b).

The request for correction of the initial determination of patent term adjustment (PTA) 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 **one hundred fifty-six (156)** days.

On April 4, 2006, the above-identified application matured into U.S. Patent No. 7,024,296. The patent issued with a Patent Term Adjustment of two hundred forty-seven (247) days.

The Office determined a patent term adjustment of two hundred forty-seven (247) days based on an adjustment for PTO delay of seventy-one (71) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and two hundred fifty-three (253) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.703(b), reduced by applicants' delays of seven (7) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b) and seventy (70) days pursuant to 35 U.S.C. 154(b)(2)(C)(1) and 37 C.F.R. §1.704(c)(10).

A review of the application reveals that applicants also should have been assessed additional delay pursuant to 37 C.F.R. §1.704(b). The Office mailed a final Office action on June 17, 2003. Applicants did not file a proper reply until they filed an RCE on December 16, 2003. Accordingly, ninety-one (91) days of applicant delay should have been assessed.

Accordingly, issuance of a certificate of correction pursuant to 35 U.S.C. 254 and 37 C.F.R. §1.322 is appropriate. No petition fee was required and none has been charged. The Office thanks Patentees for their good faith and candor in bringing this matter to the attention of the Office.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. 254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one hundred fifty-six (156)** days subject to any disclaimers.

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

Kery Fries

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

Enclosure: Copy of Draft Certificate of Correction (1 page)

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,024,296

DATED : April 4, 2006

INVENTOR(S) : Squires, 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 (247) days

Delete the phrase "by 247 days" and insert – by 156 days—

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FOLEY & LARDER LLP
777 EAST WISCONSIN AVE
SUITE 3800
MILWAUKEE WI 53202-5308

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OFFICE OF PETITIONS

In re	:
Squires, et al.	: DECISION ON APPLICATION
Application No. 09/927,946	: FOR PATENT TERM ADJUSTMENT
Filed: August 10, 2001	: AND
Patent No. 7,024,296	: NOTICE OF INTENT TO ISSUE
Issued: April 4, 2006	: CERTIFICATE OF CORRECTION

This decision is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT DETERMINATION UNDER 35 U.S.C. 154(b)(3)(B)(ii)", filed June 2, 2006.

The request for correction of the determination of patent term adjustment (PTA) 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 **one hundred fifty-seven (157)** days.

On April 4, 2006, the above-identified application matured into U.S. Patent No. 7,024,296. The patent issued with a Patent Term Adjustment of two hundred forty-seven (247) days.

The Office determined a patent term adjustment of two hundred forty-seven (247) days based on an adjustment for PTO delay of seventy-one (71) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), and two hundred fifty-three (253) days pursuant to 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.703(b), reduced by Applicants' delays of seven (7) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b) and seventy (70)

days pursuant to 35 U.S.C. 154(b)(2)(C)(1) and 37 C.F.R. §1.704(c)(10). Applicants filed a good faith and candor letter on March 27, 2006. The Office mailed a decision on May 10, 2006, stating that the correct patent term adjustment was one hundred fifty-six (156) days. The decision stated that Applicants should have been assessed an additional delay of ninety-one (91) days pursuant to 37 C.F.R. §1.704(b). Applicants filed the instant request for reconsideration on June 2, 2006. The adjustments of 91 and 70 days are at issue.

A review of the application reveals applicants should not have been assessed delay of ninety-one (91) days, but rather ninety (90) days. The Office mailed a final Office action on June 17, 2003. Applicants did not file a proper reply until they filed an RCE on December 16, 2003. Accordingly, ninety (90) days of applicant delay should have been assessed.

Applicants were however properly assessed applicant delay of seventy (70) days pursuant to 37 C.F.R. §1.704(c)(10). The Office mailed the Notice of Allowance on January 21, 2005. Applicants filed an Amendment on March 25, 2005. The Office mailed a letter in response on June 2, 2005. Accordingly, the seventy (70) days of applicant delay were properly assessed.

Receipt of the $200 petition fee is acknowledged.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify the error regarding the patent term information. See 35 U.S.C. 254 and 37 C.F.R. §1.322. The certificate of correction will indicate that the term of the above-identified patent is extended or adjusted by **one hundred fifty-seven (157)** days subject to any disclaimers.

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

Kery A. Fries

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

Enclosure: Copy of Draft Certificate of Correction (1 page)

UNITED STATES PATENT AND TRADEMARK OFFICE

DRAFT CERTIFICATE OF CORRECTION

PATENT : 7,024,296 B2

DATED : April 4, 2006

INVENTOR(S) : Squires, 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 (156) days

Delete the phrase "by 156 days" and insert – by 157 days—

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

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

COPY MAILED

NOV 2 0 2001

OFFICE OF PETITIONS

In re Application of :
Duarte et al. :
Application No. 09/927,947 :
Filed: August 9, 2001 :
Attorney Docket No. 4676P013 :

ON PETITION

This is a decision on the petition filed October 9, 2001, to accord the above-identified application a filing date of August 9, 2001, instead of August 10, 2001.

The petition is **granted**.

37 CFR 1.10(c) states,

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
> (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

All of the above requirements have been met. Therefore, the application will be accorded a filing date of August 9, 2001.

The file is now being forwarded to the Office of Initial Patent Examination to accord the application a filing date of August 9, 2001.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6536809	2003-03-25	09927955	2001-08-10	115-3506-U

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Leon E. Redman/	Date (YYYY-MM-DD)	2007-05-11
Name	Leon E. Redman	Registration Number	26021

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. 6536809
Issue Date: March 25,2003
Application No. 09927955
Filed: August 10,2001
Attorney Docket No. 115-3506-U

:

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

:

This is a decision on the electronic petition, filed May 11,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 11,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 13

FISH & RICHARDSON, P.C.
45 ROCKEFELLER PLAZA
SUITE 2800
NEW YORK, NY 10111

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OCT 2 4 2003
OFFICE OF PETITIONS

In re Application of
Wiseman et al.
Application No. 09/927,957
Filed: August 9, 2001
Attorney Docket No. 12587-008001

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed October 2, 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 June 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 January 22, 2004 was previously mailed on October 16, 2003, to the address of record.

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

This application is being forwarded to Technology Center Art Unit 2161 for examination in due course.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482.

Karen Creasy for

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

cc: Frank R. Occhiuti
Fish & Richardson, P.C.
225 Franklin Street
Boston, MA 02110-2804

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 7

Brian D. Voyce, ESQ.
8401 STERLING BRIDGE ROAD
CHAPEL HILL NC 27516

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FEB 25 2004
OFFICE OF PETITIONS

In re Application of
Michael A. Harvey et al.
Application No. 09/927,965
Filed: August 10, 2001
Title: LATERAL FLOWER PLASMA SEPARATION DEVICE

DECISION ON PETITION UNDER 37 C.F.R. §1.137(a)

This is a decision on the petition under 37 CFR §1.137(a)[1], filed January 14, 2004, 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 June 11, 2003, which set a shortened statutory period for reply of three (3) 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 September 12, 2003. A Notice of Abandonment was mailed on January 13, 2004.

With the instant petition, petitioner has included the petition fee, an amendment, and a declaration of facts from the attorney of record which asserts that the Office action of June 11, 2003 was not received.

The instant petition lacks item (3) 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.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[2]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[3]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[4]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[5]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[6]

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2 Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency's interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

3 Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

4 Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. 706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

5 Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

6 Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[7]

Nonawareness of a PTO rule will not constitute unavoidable delay[8]

The burden of showing the cause of the delay is on the person seeking to revive the application[9].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[10].

The portion of the MPEP relevant to the abandonment of this application

MPEP 711.03(c) states, in part:

PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

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7 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

8 See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawareness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

9 Id.

10 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

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.

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances that led to the abandonment of the application meet the aforementioned unavoidable standard and, therefore; petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner contends that this mailing was never received.

Petitioner has failed to establish non-receipt of an Office communication, in that he has not submitted an attestation to the fact that a search of the file jacket, the docket records, and the file indicates that the Office communication was not received.

Furthermore, he has failed to supply copies of the file jacket and 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.

For these reasons, petitioner has failed to show the correspondence at issue was not received and merely misplaced and filed with another file.

Should petitioner desire to file a renewed petition, petitioner should include copies of the docket report and the file jacket, and attest to the fact that a search of the file jacket, the docket records, and the file itself indicates that the Office communication was not received.

On the facts presented, this situation fails to constitute unavoidable delay. These facts might constitute an unintentional delay in prosecution, but it certainly does not rise to the level of unavoidable.

Therefore, it is determined that the petitioner cannot establish that the entire delay in filing the required reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable which is required in order for relief to be granted under 37 CFR 1.137(a).

Consequently, the petition is **DISMISSED**.

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

Alternate Venue

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b)[11].

The reply to this letter may be submitted by mail[12], hand-delivery[13], or facsimile[14].

The application file will be retained in the Office of Petitions for two (2) months.

A copy of the non-final rejection of June 11, 2003 has been included with this decision.

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

Encl. Copy of Non-Final Rejection mailed June 11, 2003

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11 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.

12 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
13 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
14 (703) 872-9306, attention Office of Petitions, Attorney Paul Shanoski.

UNITED STATES 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. 10

Brian D. Voyce, ESQ.
8401 STERLING BRIDGE ROAD
CHAPEL HILL NC 27516

COPY MAILED
AUG 1 1 2004
OFFICE OF PETITIONS

In re Application of
Michael A. Harvey et al.
Application No. 09/927,965
Filed: August 10, 2001
Title: LATERAL FLOWER PLASMA SEPARATION DEVICE

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(B)

This is a decision on the renewed petition under 37 CFR §1.137(b)[1], filed July 26, 2004, 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 June 11, 2003, which set a shortened statutory period for reply of three (3) 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 September 12, 2003. A Notice of Abandonment was mailed on January 13, 2004.

On January 14, 2004, the original petition under 37 C.F.R. §1.137(a) was received, which was dismissed via the mailing of a decision on February 25, 2004 for failure to establish that the delay was unavoidable.

With the instant petition, Petitioner has submitted an amendment.

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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 (i.e. the period from August 31, 1995 until the filing of a grantable petition) 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.

It is noted that with the renewed petition, Petitioner has submitted a check in the amount of $650, and has not provided an authorization to charge any deficient fees to a deposit account.

The decision of February 25, 2004 set a two-month period for reply. The renewed petition contains a certificate of mailing dated July 26, 2004, but fails to contain a petition for an extension of time. As such, the response is not timely, and cannot be considered.

Furthermore, the fee for filing a petition to revive an unintentionally abandoned application under 37 C.F.R. §1.137(b) is set forth in 37 C.F.R. §1.17(m) as being $665.00 for a small entity. Petitioner included $650. Therefore, requirement number (2) has not been met.

The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. §1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. See M.P.E.P. 711.03(c)(III)(B)[2]

In view of the above, this petition 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 "Second Renewed Petition Under 37 C.F.R. 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail[3], hand-delivery[4], or facsimile[5].

The application file will be retained in the Office of Petitions for two (2) months.

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[2] "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. §41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. §1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1082), *reprinted in* 1982 U.S.C.C.A.N. 770 ('[t]he fees set forth in this section are due on filing the petition'). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. §1.137 lacking the requisite petition fee."

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

4 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

5 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : June 27, 2009

TO SPE OF : ART UNIT ~~2187~~ 2437

SUBJECT : Request for Certificate of Correction for Appl. No. 09/928004 patent No.:6963975

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: _____

/Emmanuel Moise/ — SPE

2437 — Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

ANDREI S. DUKHIN
3 HILLSIDE AVENUE
MOUNT KISCO, NY 10549

COPY MAILED

JAN 1 5 2004

OFFICE OF PETITIONS

In re Application of
Dukhin et al.
Application No. 09/928,014
Filed: August 3, 2001
For: Method For The Removal Of Heavy Metals From Aqueous Solution By Means Of Silica As An Adsorbent In Counter-Flor Selective Dialysis

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 12, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

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 October 4, 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 December 5, 2001. A Notice of Abandonment was mailed on Novenber 24, 2003.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:
(1) the required reply,[1]
(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.

Where there is a question as to whether either the abandonment or the delay in filing a petition

[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.

under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

The instant petition lacks item (1). Petitioner did submit the missing declaration with the instant petition on December 12, 2003. However, as stated on the Notice mailed on October 4, 2001, to avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(l) of $65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items. Petitioner also failed to submit the below required item:

- The Claim(s) commencing on a separate sheet (37 CFR 1.75(h)).

In order to revive the above-identified application, petitioner must submit the required item listed above, along with the $65.00 late oath or declaration surcharge. A copy of the Notice mailed on October 4, 2001, is enclosed for petitioner's convenience.

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the existing Customer Window located at:

2011 South Clark Place
Crystal Plaza 1 Lobby
Room 1B03
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

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

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

Enclosure: Notice To File Missing Parts Of Nonprovisional Application
(Originally mailed on October 4, 2001)

---

[2] See MPEP 711.03(c)(III)(C) and (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

Paper No. 8

ANDREI S. DUKHIN
3 HILLSIDE AVENUE
MOUNT KISCO, NY 10549

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FEB 17 2004
OFFICE OF PETITIONS

In re Application of
Dukhin et al.
Application No. 09/928,014
Filed: August 3, 2001
For: Method For The Removal Of Heavy Metals From Aqueous Solution By Means Of Silica As An Adsorbent In Counter-Flow Selective Dialysis

ON PETITION

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed February 9, 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 October 4, 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 December 5, 2001. A Notice of Abandonment was mailed on November 24, 2003.

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

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

The 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
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Dr. Andrei Dukhin
364 Adams Street
Bedford Hills, NY 10507

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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SEP 02 2008

PERMAN & GREEN
425 POST ROAD
FAIRFIELD, CT 06824

In re Application of	:	
Lauri Piikivi	:	
Application No. 09/928,026	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 617-010487-US(PAR)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 4, 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 May 31, 2006. On January 4, 2007, the present petition was filed. A Notice of Abandonment was subsequently mailed on March 22, 2007.

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 Joseph V. Gamberdell, Jr. appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that petitioner is authorized to represent the particular party on whose behalf he acts.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $790 and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; and (3) an adequate statement of unintentional delay[1].

The application is being referred to Technology Center AU 2137 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

[1] 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While 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.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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CHRISTIE, PARKER & HALE, LLP
PO BOX 7068
PASADENA CA 91109-7068

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NOV 19 2007

OFFICE OF PETITIONS

In re Application of	:	
Harari, Adi	:	
Application No. 09/928,036	:	ON PETITION
Filed: August 8, 2001	:	
Attorney Docket No. 45388/G453	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed October 19, 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 a Request for Continued Examination (RCE); (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 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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ROZSA LAW GROUP LC
18757 BURBANK BOULEVARD
SUITE 220
TARZANA CA 91356-3346

MAILED

APR 27 2009

OFFICE OF PETITIONS

In re Patent No. 6,756,695 :
Bart D. Hibbs et al :
Application No. 09/928,038 :
Filed: August 9, 2001 :
Attorney Docket No. 35140.002 :

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 patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 7

PERKINS COIE LLP
PATENT-SEA
P O BOX 1247
SEATTLE, WA 98111-1247

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JUL 0 9 2003

OFFICE OF PETITIONS

In re Application of	:
Jon M. Bishay	:
Application No. 09/928,044	: DECISION GRANTING PETITION
Filed: August 11, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 33734-8001US2	:

This is a decision on the petition under 37 CFR 1.137(b), filed April 30, 2003, to revive the instant nonprovisional application for failure to timely notify the Office 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 a foreign country on August 9, 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(b) to revive for failure to timely notify the Office of the filing of an application in a foreign country 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 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. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of October 16, 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 3762 for examination in due course.

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

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

BLANK ROME LLP
600 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON DC 20037

COPY MAILED
AUG 22 2008

In re Patent No. 6,904,324	:	
Issue Date: June 7, 2005	:	
Application No. 09/928,044	:	NOTICE
Filed: August 11, 2001	:	
Attorney Docket No. 33734-8001US2	:	

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 patent under 37 CFR 1.56. **1098 Off. Gaz. Pat. Office 502 (January 3, 1989)**. Therefore, nothing in this Notice is intended to imply that an investigation was done.

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This patent is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

DIPINTO & SHIMOKAJI PC
SUITE 480
1301 DOVE STREET
NEWPORT BEACH, CA 92660

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APR 2 8 2003

OFFICE OF PETITIONS

In re Application of
Robert B. Seebeger et al
Application No. 09/928,058
Filed: August 1, 2001
Attorney Docket No. 910.132

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 11, 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 September 19, 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 November 20, 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: JOEL J. HAYASHIDA
THE CLOROX COMPANY
P.O. BOX 24305
OAKLAND, CA 94623-1305

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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FAEGRE & BENSON
PATENT DOCKETING
2200 WELLS FARGO CENTER
90 SOUTH 7TH STREET
MINNEAPOLIS, MN 55402-3901

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JAN 19 2005

OFFICE OF PETITIONS

In re Application of	:	
James D. O'Brien Jr.	:	
Application No. 09/928,073	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. 12128-129001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 2004, 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 April 22, 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)). The reply submitted on October 22, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed November 12, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on October 23, 2004.

The above-identified application is being revived solely for purposes of continuity with a submission under 37 CFR 1.114 (request for continued examination).

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

This matter is being referred to Technology Center 2663 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Amendment.

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

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

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MAY 06 2005

OFFICE OF PETITIONS

In re Application of
Dole et al.
Application No. 09/928,110
Filed: August 10, 2001
Attorney Docket No. JBP0563USNP
For: Skin Care Composition That Changes Color Upon Drying

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(a), filed January 28, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any 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 in a timely manner to the Notice mailed November 24, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 25, 2004.

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

(1) the required reply,
(2) the petition fee,
(3) a showing <u>to the satisfaction of the Commissioner</u> that the <u>entire</u> 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 <u>unavoidable</u>, 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).

The petition states, "Verified showings from the relevant parties as to the causes of the unavoidable delays are filed herewith." Unfortunately, the electronic file wrapper does not include a copy of these papers. The Office would appreciate petitioner supplying an additional copy of the missing papers.

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

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

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 concerning the instant decision should 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
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PHILIP S. JOHNSON
JOHNSON & JOHNSON
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NJ 08933-7003

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AUG 2 6 2005

OFFICE OF PETITIONS

In re Application of
Dole et al.
Application No. 09/928,110
Filed: August 10, 2001
Attorney Docket No. JBP0563USNP
For: Skin Care Composition That Changes Color Upon Drying

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed August 12, 2005, to revive the above-identified application.

The petition is **granted**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice mailed November 24, 2004, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 25, 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 1617 will be informed the application has been revived so that it may take steps to have the application further examined in due course.

Telephone inquiries concerning the instant decision should 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
PO Box 1450
Arlington, VA 22313-1450
www.uspto.gov

Paper No. 11

Jesus Juanos Timoneda
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

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SEP 3 0 2003

OFFICE OF PETITIONS

In re Application of	:	
Breitenbucher, J. Guy et al.	:	
Application No. 09/928,122	:	ON PETITION
Filed: August 10, 2001	:	
Attorney Docket No. ORT-1478	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 14, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 23, 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 application became abandoned on January 24, 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 1624 for further processing.

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

McAndrews, Held & Malloy, Ltd.
34th Floor
500 West Madison Street
Chicago, IL 60661

COPY MAILED

JUN 2 0 2002

OFFICE OF PETITIONS

In re Application of :
Daniel J. Sullivan, :
Mark P. Crockett, John Epler and :
Robert A. Hilgart :
Application No. 09/928,130 :
Filed: August 10, 2001 :
Title: COMPUTERIZED RISK MANAGEMENT :
MODULE FOR MEDICAL DIAGNOSIS :

DECISION REFUSING STATUS
UNDER 37 C.F.R. §1.47(a)

This is a decision on the "Petition under 37 CFR §1.47(a)," filed March 15, 2002.

The petition under 37 CFR §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 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).

The above-identified application was filed on August 10, 2001, without an executed declaration, and naming Daniel J. Sullivan, Mark D. Crockett, John Epler and Robert A. Hilgart as joint inventors. In response to a "Notice to File Missing Parts of Nonprovisional Application," mailed September 18, 2001, applicant timely filed the instant petition under §1.47(a)(and fee) and late surcharge under §1.16(e). Accompanying the petition was a declaration executed by inventors Crockett, Epler and Hilgart; and a declaration executed by inventor Epler on behalf of nonsigning inventor Sullivan. Rule 47 applicants assert that status under §1.47(a) is proper because inventor Sullivan refuses to execute the declaration. In support thereof, applicants submit a declaration of facts of patent attorney George Wheeler.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after 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; and (4) a statement of the last known address of the non-signing inventor.

The petition includes payment of the petition fee and a statement of the last known address of non-signing inventor Sullivan. By statement of attorney Wheeler with supporting documentary evidence, rule 47 applicants have provided evidence that non-signing inventor

Sullivan has refused to join in the application after having been presented with the application papers. However, the petition is not grantable because the declaration submitted does not satisfy requirement (2).

As to requirement (2), the declaration as submitted is not acceptable. 37 CFR 1.47(a) and 35 U.S.C. 116, second paragraph, require all available joint inventors to file an application "on behalf of" themselves and on behalf of a joint inventor who "cannot be found or reached after diligent effort" or who refuses to "join in an application." Thus, in addition to other requirements of law (35 U.S.C. 111(a) and 115), in an application deposited in the U.S. Patent and Trademark Office pursuant to 37 CFR 1.47(a):

> (A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP §602, §605.01, and §1414) and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated.
>
> (Emphasis added).

Here, applicants have indicated, by having inventor Epler sign on behalf of non-signing inventor Sullivan, that the declaration as submitted is not signed by all the available joint inventors on behalf of themselves and on behalf of joint inventor Sullivan. A declaration properly executed by all available joint inventors on behalf of non-signing inventor Sullivan is required.

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
ATTN: NANCY JOHNSON

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

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

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

McAndrews, Held & Malloy, Ltd.
34th Floor
500 West Madison Street
Chicago, IL 60661

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JUL 25 2002

OFFICE OF PETITIONS

In re Application of
Daniel J. Sullivan,
Mark P. Crockett, John Epler and
Robert A. Hilgart
Application No. 09/928,130
Filed: August 10, 2001
Title: COMPUTERIZED RISK MANAGEMENT MODULE FOR MEDICAL DIAGNOSIS

DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(a)

This is in response to the facsimile communication and supplemental declaration for patent filed July 12, 2002, requesting to be informed if this submission overcomes the objections cited in the Decision Refusing Status Under 37 CFR §1.47(a) dated June 20, 2002. This communication is being treated as a request for reconsideration of petition under 37 CFR 1.47(a).

The petition under 37 CFR 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 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).

The above-identified application was filed on August 10, 2001, without an executed declaration, and naming Daniel J. Sullivan, Mark D. Crockett, John Epler and Robert A. Hilgart as joint inventors. In response to a "Notice to File Missing Parts of Nonprovisional Application" mailed September 18, 2001, applicant timely filed the initial petition under §1.47(a)(and fee) and late surcharge under §1.16(e). Accompanying the petition was a declaration executed by inventors Crockett, Epler and Hilgart; and a declaration executed by inventor Epler on behalf of non-signing inventor Sullivan. The petition was dismissed because the declaration submitted was not executed by all of the available joint inventors on behalf of non-signing inventor Sullivan[1]. A declaration properly executed by all

[1] 37 CFR 1.47(a) and 35 U.S.C. 116, second paragraph, require all available joint inventors to file an application "on behalf of" themselves and on behalf of a joint inventor who "cannot be found or reached after diligent effort" or who refuses to "join in an application." Thus, in addition to other requirements of law (35 U.S.C. 111(a) and 115), in an application deposited in the U.S. Patent and Trademark Office pursuant to 37 CFR 1.47(a):

(A) All the available joint inventors must (1) make oath or declaration on their own behalf as required by 37 CFR 1.63 or 1.175 (see MPEP §602, §605.01, and §1414) and (2) make oath or declaration on behalf of the non-signing joint inventor as required by 37 CFR 1.64. An oath or declaration signed by all the available joint inventors with the

available joint inventors on behalf of non-signing inventor Sullivan was required. (Decision mailed June 20, 2002).

The supplemental declaration filed July 12, 2002 does not overcome the objections set forth in the decision mailed June 20, 2002. The supplemental declaration has been amended to include the language "I have been informed that inventor Daniel J. Sullivan has refused to sign a declaration respecting this patent application. For that reason, I am making this declaration on my own behalf and on behalf of non-signing inventor Daniel J. Sullivan." Such a statement in a declaration is not inconsistent with 37 CFR 1.47(a) or 35 U.S.C. 116, and thus, is not objected to. However, this supplemental declaration is not executed by any of the joint inventors, and thus, cannot satisfy the requirement that all available joint inventors file an application on behalf of themselves and on behalf of the non-signing inventor(s). It is further noted that the supplemental declaration is spaced such that substantial portions of pages 2-4 are blank.

The supplemental declaration as filed July 12, 2002 but executed by all of the available joint inventors, without any non-dated/non-initialized alterations[2], would be acceptable on petition under §1.47(a). It is additionally preferred that the blank portions of the declaration be minimized. To facilitate quick resolution of this matter, petitioner may wish to fax such a declaration when completed to the attention of the undersigned with concurrent telephone notification of transmittal.

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
ATTN: NANCY JOHNSON

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

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

Nancy Johnson

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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signature block of the non-signing inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the non-signing inventor(s), unless otherwise indicated.

(Emphasis added).

[2] For example, declarations are often rendered unacceptable when one of the signing inventors alters the declaration by crossing out and rewriting his mailing address, but not initialing and dating the change.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 16

McAndrews, Held & Malloy, Ltd.
34th Floor
500 West Madison Street
Chicago, IL 60661

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JAN 27 2003

OFFICE OF PETITIONS

In re Application of
Daniel J. Sullivan,
Mark P. Crockett, John Epler and
Robert A. Hilgart
Application No. 09/928,130
Filed: August 10, 2001
Title: COMPUTERIZED RISK MANAGEMENT
MODULE FOR MEDICAL DIAGNOSIS

DECISION ACCORDING STATUS
UNDER 37 C.F.R. § 1.47(a)

This is a decision on the second "Request for Reconsideration of Petition," filed January 13, 2003.

The petition under 37 CFR § 1.47(a) is **GRANTED**.

The above-identified application was filed on August 10, 2001, without an executed declaration, and naming Daniel J. Sullivan, Mark D. Crockett, John Epler and Robert A. Hilgart as joint inventors. In response to a "Notice to File Missing Parts of Nonprovisional Application," mailed September 18, 2001, applicant timely filed the initial petition under §1.47(a)(and fee) and late surcharge under §1.16(e). Accompanying the petition was a declaration executed by inventors Crockett, Epler and Hilgart; and a declaration executed by inventor Epler on behalf of non-signing inventor Sullivan. The initial petition was dismissed for failure to submit a declaration executed by all of the available inventors on behalf of themselves and on behalf of non-signing inventor Sullivan. (Decision mailed June 20, 2002).

On July 12, 2002, applicants submitted a declaration with language expressly indicating that the signers of the declaration were signing on behalf of non-signing inventor Sullivan. This submission was treated as a request for reconsideration. However, since the declaration was unexecuted, the renewed petition was dismissed. (Decision mailed July 25, 2002).

On instant request for reconsideration, applicants submitted the declaration with language expressly indicating that the signers of the declaration were signing on behalf of non-signing inventor Sullivan. This declaration was executed by all of the available joint inventors on behalf of themselves and on behalf of non-signing inventor Sullivan. Further, this declaration has been reviewed and found in compliance with §§ 1.63 and 1.64. Applicants have now met the requirements for status under § 1.47.

In view thereof, this application is hereby accorded Rule 1.47(a) status.

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 returned to the Office of Initial Patent Examination for completion of pre-examination processing.

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

Nancy Johnson
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

MR. DANIEL J. SULLIVAN
210 ST. MICHAEL'S COURT
OAKBROOK, IL 60523

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JAN 2 7 2003

OFFICE OF PETITIONS

In re Application of :
Daniel J. Sullivan, :
Mark P. Crockett, John Epler and :
Robert A. Hilgart :
Application No. 09/928,130 :
Filed: August 10, 2001 :
Title: COMPUTERIZED RISK MANAGEMENT:
MODULE FOR MEDICAL DIAGNOSIS :

LETTER

Dear Mr. Sullivan:

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 (703) 305-0309. 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).

Nancy Johnson

Nancy Johnson
Petitions Attorney
Office of Petitions

George Wheeler
McAndrews, Held & Malloy, Ltd.
34th Floor
500 West Madison Street
Chicago, IL 60661
(312) 775-8000

UNITED STATES 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. 19

MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

COPY MAILED

OCT 12 2004

OFFICE OF PETITIONS

In re Application of
Dan Sullivan, et al.
Application No. 09/928,130
Filed: August 10, 2001
Attorney Docket No. 12917US03

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed June 17, 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 October 31, 2001. 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 20, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

This application is being forwarded to Technology Center Art Unit 3626 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

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/RECEIPT DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/928,130	08/10/2001	Dan Sullivan	12917US03

CONFIRMATION NO. 6490

OC000000014052025

OC000000014052025

00023446
MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

Date Mailed: 10/12/2004

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is 01/20/2005.

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and 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 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (703) 305-9282. Questions regarding publications of patent applications should be directed to the patent application publication hotline at (703) 605-4283 or by e-mail pgpub@uspto.gov.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

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 0 5 2005

OFFICE OF PETITIONS

Akzo Nobel Inc.
Intellectual Property Department
7Livingstone Avenue
Dobbs Ferry, New York 10522-3408

In re Application of
Van Engelen et al.
Application No. 09/928,138
Filed: August 10, 2001
Attorney Docket No. ACO6160US

: DECISION GRANTING PETITION

This decision is in response to applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT" filed May 3, 2004. Applicant's request that the amount of patent term adjustment (PTA) be adjusted from one hundred and twenty-five (125) days to two hundred and one days at the time of the mailing of the notice of allowance.

Applicants' request for reconsideration of the patent term adjustment is **GRANTED.** The Office will adjust the PTA determination at the time of the mailing of the notice of allowance to be two hundred and one (202) days as suggested by applicant.

Applicants' allege that the seventy-seven day reduction for the response filed by applicant to the notice to file missing parts within three months is not accurate. Applicants further agree with the Office as to the fourteen month requirement as well as an overdue three month response (202-1-201) Applicants assert that the response to the missing parts was filed on October 30, 2001 and received by the Office on January 29, 2002. Applicants assert that the mailing occurred during the Anthrax mail crisis and accordingly, should not receive any PTA reduction.

Applicants' arguments are persuasive. The Office posted a notice during the mail delay stating that during such delay the Office would use the date of the certificate of mailing and add 3 business days to ascertain the response date by applicant. See 1254 Off. Gaz Pat. Off. 92 (Jan. 15, 2002).[1] Accordingly, the Office notes that pursuant to this notice the applicants did in fact respond to the notice to file missing parts within three months. The seventy-seven (77) day reduction will be removed.

The Office notes that the two hundred and two (203) days of Office delay can be attributed to the Office's failure to act upon the application within fourteen months of the filing of the application. See 37 CFR 1.702(a)(1). In addition, the one day reduction can be attributed to the applicants'

[1]The Office notes that the for purposes of PTA the date of the certificate of mailing is not generally considered the response date by applicant but rather the date that the response is received in the Office. See 37 CFR 1.703(f).

failure to respond to the Office action mailed September 15, 2003 within three months.[2] Accordingly, the proper PTA at the time of the mailing of the notice of allowance is two hundred and two (202) days.

After the mailing of this decision, the Office will forward such file to the Office of Patent Publication for a prompt issuance of the patent application. The Office notes that any delay in issuing the application beyond four months of the payment of the issue fee and other requirements being satisfied will be reflected in the PTA determination at the time of the issuance of the patent.

The Office has assessed the $200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are required.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

Kery A Fries for

Karin Ferriter
Senior Legal Advisor
Office of Deputy Commissioner
for Patent Examination Policy

CC: Copy of Adjusted PAIR calculation

[2]The applicant responded on December 16, 2003, a one day delay.

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)
6573830	2003-06-03	09928160	2001-08-10	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

◉ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

A Joint Patentee and I certify that I am authorized to sign this submission on behalf of all the other patentees			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature.			
Signature	/Saul Cohen/	Date (YYYY-MM-DD)	2009-06-02
Name	Saul Lawrence Cohen		

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
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In re Patent No. 6573830
Issue Date: June 3,2003
Application No. 09928160
Filed: August 10,2001
Attorney Docket No. 49209-262306

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

This is a decision on the electronic petition, filed June 3,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 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 3,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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DORSEY & WHITNEY
1420 FIFTH AVENUE
SUITE 3400
SEATTLE, WA 98101

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SEP 17 2004

OFFICE OF PETITIONS

In re Application of	:	
Trung Tri Doan et al	:	
Application No. 09/928,173	:	ON PETITION
Filed: August 9, 2001	:	
Attorney Docket No. 500084.05	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 30, 2004, 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 January 29, 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)). The reply submitted on May 28, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed July 26, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed. Extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on May 30, 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), 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 above-identified application is being revived for consideration of a submission under 37 CFR 1.114 (request for continued examination).

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

This matter is being referred to Technology Center AU 3723 for processing of the request for continued examination (RCE) under 37 CFR 1.114.

Wan Laymon

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

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DIW Nov-07

TAREK N. FAHMI
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
SEVENTH FLOOR
12400 WILSHIRE BOULEVARD
LOS ANGELES CA 90025-1026

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NOV 2 8 2007

OFFICE OF PETITIONS

In re Patent Number: 7062677	:	
Issue Date: 06/13/2006	:	
Application Number: 09/928176	:	ON PETITION
Filing Date: 08/09/2001	:	
Attorney Docket Number:	:	
081862.P258	:	

This is a decision on the paper filed on September 6, 2007, which is treated as a request 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**.

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

Telephone inquires concerning this matter may be directed to the undersigned at 571.272.3231. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at 703.305.8309.

The $130.00 processing fee will be charged to counsel's deposit account as authorized in the request.

---

[1] See Official Gazette of 22 June, 2004.

The application is referred to Technology Center Art Unit 2113 for further processing.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Cc:

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

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DLA PIPER RUDNICK GRAY CARY US, LLP
4365 EXECUTIVE DRIVE
SUITE 1100
SAN DIEGO, CA 92121-2133

FAX RECEIVED

MAY 26 2005

OFFICE OF PETITIONS

In re Application of	:	
Christophe Schilling	:	
Application No. 09/928,191	:	ON PETITION
Filed: August 11, 2001	:	
Attorney Docket No. UCSD 99-093	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 22, 2004, to revive the above-identified application.

In response to the Restriction Requirement mailed October 3, 2003, petitioner hereby submits $685 for the petition to revive fee, an election, and the statement of unintentional delay as required by 37 CFR 1.137(b).

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

The application file is being referred to Technology Center Art Unit 1631, 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
Office of the Deputy Commissioner
for Patent Examination Policy

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

JAN 24 2002

ELI LILLY AND COMPANY
LILLY CORPORATE CENTER
PATENT DIVISION DC: 1104
INDIANAPOLIS IN 46285

#6

In re Application of	:
James A. Hoffman et al	:
Serial No.: 09/928,198	: PETITION TO MAKE SPECIAL
Filed: August 10, 2001	:
Attorney Docket No.: X-12383N	:

This is in response to applicants' petition filedAugust 10, 2001, to make the above-identified application special under the provisions of 37 CFR 1.102(c), based on actual infringement.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, II. Therefor 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 William R. Dixon, Jr. by letter addressed to the Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

APR 29 2005

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HANS-PETER G. HOFFMAN
PILLSBURY WINTHROP, LLP
P.O.BOX 10500
MCLEAN, VA 22102

In re Application of Lohray *et. al.*
Serial No.: 09/928,242
Filed: August 10, 2001
Attorney Docket No.: CHL-102(US)

: PETITION DECISION

This is in response to the petition under 37 CFR 1.181, filed March 23, 2005, for withdrawal of abandonment of the above identified application based on evidence that the Notice Of Abandonment was not proper.

A review of the file history shows that an Office Communication, a Notice of Allowance and Issue Fee(s) Due, was mailed to Applicants on October, 20 2003, that provided a non-extendable 3 month period for response. Upon failure to record any payment related to the October 20, 2003 Communication, the Office of Publications mailed Applicants a Notice of Abandonment, on February 18, 2005.

According to Applicants, the fees dues were timely paid. In furtherance of their assertion, Applicants enclosed with their petition a copy the return receipt postcard dated January 16, 2004, a copy of Pillsbury Winthrop check number 003663 in the amount of $1,655, a copy of PTO/SB/21 Transmittal Form and Certificate of mailing, a copy of PTO/SB/17 Fee Transmittal for FY 2004, copy of PTOL-85, Part B Fee(s) Transmittal, and certificate of mailing for payment of the issue fee and publication fee. In view of the evidence that was included with the petition, the Notice of Abandonment is withdrawn and the application is restored to pending status with the mailing of this decision.

The petition is therefore **GRANTED**.

The application will be forwarded to the Publication Branch for further action once the appropriate fees are deducted from Account Number 03-3975.

Should there be any questions about this decision please contact Jean Vollano, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0648, or by facsimile sent to the general Office facsimile number, 703-872-9306.

Jean F Vollano for
Bruce Kisliuk
Director, Technology Center 1600

OIPE JC54
NOV 28 2001
PATENT & TRADEMARK OFFICE

#3

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
09/928,250	08/09/2001	Robert Elghanian	10907-15

CONFIRMATION NO. 5647

FORMALITIES LETTER

OC000000006812127

Brinks, Hofer, Gilson & Lione
NBC Tower
Suite 3600
455 North Cityfront Plaza
Chicago, IL 60611

BRINKS HOFER GILSON & LIONE
RECEIVED
OCT 02 2001
RECEIVED
U. S. DOCKET

Date Mailed: 09/28/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

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 for a non-small entity. If appropriate, applicant may make a written assertion of entitlement to small entity status and pay the small entity filing fee (37 CFR 1.27).*
- Total additional claim fee(s) for this application is $1332.
  - **$1332** for **74** total claims over 20.
- 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(l) of $130 for a non-small entity, must be submitted with the missing items identified in this letter.
- **The balance due by applicant is $ 2172.**

10/05/2001 RWONDAF1 00000006 09928250
01 FC:101 740.00 OP
02 FC:105 130.00 OP
03 FC:103 1332.00 OP

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

OIPE JC54 NOV 28 2001 PATENT & TRADEMARK OFFICE

12-03-01

Sceter/#

TRANSMITTAL LETTER			Case No. 10907-15
Serial No. 09/928,250	Filing Date August 9, 2001	Examiner To be assigned	Group Art Unit 1645
Inventor(s) Elghanian, et al.			
Title of Invention USE AND EVALUATION OF A [2+2] PHOTOADDITION IN IMMOBILIZATION OF OLIGONUCLEOTIDES ON A THREE-DIMENSIONAL HYDROGEL MATRIX			

TO THE COMMISSIONER FOR PATENTS

Transmitted herewith is Transmittal Letter (in dup.), Response to Notice to File Missing Parts (in dup.), Copy of Notice to File Missing Parts, Assignment, Recordal of Assignment, Declaration, Power of Attorney, four checks (itemized below), and return receipt.

☐ Small entity status of this application under 37 CFR § 1.27 has been established by verified statement previously submitted.

☐ A verified statement to establish small entity status under 37 CFR §§ 1.9 and 1.27 is enclosed.

☐ Petition for a _____month extension of time.

☐ No additional fee is required.

☐ The fee has been calculated as shown below:

Claims as Filed	Col. 1	Col. 2	Small Entity			Other Than Small Entity	
For	No. Filed	No. Extra	Rate	Fee	or	Rate	Fee
Basic Fee				$ 355	or		$ 740
Total Claims	94-20	74	x$9=	$	or	74x$18=	$1,332
Indep. Claims	2-3	0	x$40=	$	or	x$80=	$
Multiple Dependent Claims Present			+$135=	$	or	+$270=	$
			Total	$	or	Total	$2,072

*If the difference in col. 1 is less than zero, enter "0" in col. 2.

☐ Please charge Deposit Account No. 23-1925 (BRINKS HOFER GILSON & LIONE) in the amount of $_____. A duplicate copy of this sheet is enclosed.

☒ Checks in the amount of $130, $40, $1,332 and $740 to cover Missing Parts Fee, Assignment Recordal Fee, Additional Claims Fee, and Basic Filing Fee, respectively, are enclosed.

☒ The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this communication or credit any overpayment to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

☒ I hereby petition under 37 CFR § 1.136(a) for any extension of time required to ensure that this paper is timely filed. Please charge any associated fees which have not otherwise been paid to Deposit Account No. 23-1925. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Jonathan M. Blanchard, Ph.D.
Registration No. 48,927
Attorney for Applicant

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, ILLINOIS 60610
(312) 321-4200

I hereby certify that this correspondence is being deposited with the United States Postal Service Express Mail, with sufficient postage, in an envelope addressed to: U.S. Patent and Trademark Office, P.O. Box 2327, Arlington, VA 22202, on November 26, 2001.

Date: 11/28/01 Signature: _____

rev. Dec.-00F:\COMMON\jmbb\Common Client-Matter Documents\Formal Papers by Case\10907 Motorola\10907-15\10907-15 Transmittal Ltr 11-28-1.doc

OIPE JC
NOV 28 2001
PATENT & TRADEMARK OFFICE

"Express Mail" mailing label number EL669269748US
Date of Deposit: November 28, 2001

Case No. 10907/15

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

R. Elghanian, et al.

Serial No.: 09/928,250

Filed: August 9, 2001

For: USE AND EVALUATION OF A [2+2] PHOTOADDITION IN IMMOBILIZATION OF OLIGONUCLEOTIDES ON A THREE-DIMENSIONAL HYDROGEL MATRIX

Attention: Manager, Application Branch

RESPONSE TO NOTICE TO FILE MISSING PARTS OF APPLICATION FILING DATE GRANTED

Commissioner for Patents
Washington, D.C. 20231

Attn.: Box Missing Parts

Dear Sir:

In accordance with the Notice to File Missing Parts of Application Filing Date Granted dated September 28, 2001, a copy of which is attached, enclosed herewith for filing are the following documents:

☒ Fully executed Declaration for Patent Application and Power of Attorney for the above-referenced patent application.

☒ Applicant is:

- ☐ a small entity, verified statement is:
  - ☐ attached
  - ☐ already filed

☒ other than small entity

☒ Checks totaling $2,202.00 for:

☒ Filing Fee of $740.00.

☒ Surcharge of $130.00.

☒ Additional Claim Fees of $1,332.00.

☐ Petition for Extension of Time (37 C.F.R. § 1.136(a)) to file missing parts (in duplicate).

☒ Other: Assignment, Assignment Recordal, and a check for $40.

☒ The Commissioner is hereby authorized to charge any deficiencies in fees or credit overpayment to Deposit Account No. 23-1925. A duplicate copy of this paper is enclosed.

Respectfully submitted,

Dated: November 28, 2001

Jonathan M. Blanchard, Ph.D.
Registration No. 48,927
Attorney for Applicant(s)

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610
(312)321-4200

rev. Oct.-01

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MOTOROLA INC
600 NORTH US HIGHWAY 45
ROOM AS437
LIBERTYVILLE IL 60048-5343

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SEP 1 7 2004

OFFICE OF PETITIONS

In re Application of	:	
Cho, et al.	:	
Application No. 09/928,321	:	ON PETITION
Filed: August 13, 2001	:	
Attorney Docket No. CS11370	:	

This is a decision on the "PETITION FOR WITHDRAWAL OF ABANDONMENT UNDER 37 CFR 1.137(b)", filed August 5, 2004, which is being treated as a petition to revive an unintentionally abandoned 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 response to the non-final Office action mailed November 17, 2003. This Office action set a shortened statutory period for reply of three months. No extensions of time under 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 18, 2004. The mailing of this decision precedes the mailing of a Notice of Abandonment.

With the instant petition, petitioner paid the petition fee, filed a reply in the form of an amendment, and made the proper statement of unintentional delay.

The petition fee of $1,330 has been charged to Deposit Account No. 50-2117, as authorized.

The application file is being forwarded to Group Art Unit 2645 for consideration of the amendment filed August 5, 2004.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIMOCK STRATTON LLP
20 QUEEN STREET WEST SUITE 3202, BOX 102
TORONTO ON M5H 3R3 CA CANADA

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In re Application of	:
Ross A. Jeffery	:
Application No. 09/928,332	: DECISION ON PETITION
Filed: August 14, 2001	:
Attorney Docket No. 1595-17/MBE	:

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 29, 2008, 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 Rejection of May 23, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A three 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 November 24, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405; (2) the petition fee of $770; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 2623 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment previously submitted on November 23, 2007.

Andrea Smith
Petitions Examiner
Office of Petitions

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

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OCT 15 2007

OFFICE OF PETITIONS

In re Application of

Corrie, et al.

Application No. 09/928,364

Filed: August 14, 2001

Attorney Docket No. 1330.1101

DECISION ON PETITION

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181(a), filed September 24, 2007.

The petition is **granted**.

This application was held abandoned February 18, 2007, after no reply was received to the non-final Office action mailed November 17, 2006. The notice set for shortened statutory period for reply of three (3) months from its mailing date. A response was not received within the allowable period and the application became abandoned on February 18, 2007. A Notice of Abandonment was mailed on September 19, 2007. Petitioner maintains that the non-final Office action was never received and provides a copy of the relevant docketing calendar as proof of the same.

Section 711.03(c)(II) of the *Manual of Patent Examining Procedure* ("MPEP") provides that in order to establish non-receipt of an Office action so as prove that the imposition of a holding of abandonment is improper, petitioner must: 1) provide a statement to the Office indicating that the Office action was not received by petitioner; 2) include in the statement an attestation to the fact that a review of the file jacket and docket records maintained by petitioner indicates that the Office action was not received; and 3) provide a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

The application file is being forwarded to Technology Center 3600, GAU 3691 for further processing, including re-mailing of the non-final Office action and resetting of the time period for reply.

Questions 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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JJGJR.: 02-05

Paper No: 12

CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON MA 02210

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FEB 28 2005

OFFICE OF PETITIONS

In re Application of
Spielberg :
Application No. 09/928,392 :
Filing Date: 13 August, 2001
Attorney Docket No. 15343-0028C3 :

This is a decision on the petition filed on 21 December, 2004, alleging, *inter alia*, unavoidable delay under 37 C.F.R. §1.137(a).

For the reasons set forth below, the petition as considered under 37 C.F.R.§1.137(a) is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b)[1] (as to unintentional delay) must be submitted within two (2)

[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

months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.137(a)"; and/or "Petition under 37 C.F.R. §1.137(b)";

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

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 19 March, 2004,[2] with reply due absent extension of time on or before Monday, 21 June, 2004;
- the instant application went abandoned after midnight 19 June, 2004;
- the Office mailed a Notice of Abandonment on 2 December, 2004;
- with the instant petition (with fee authorization), Petitioner fails to submit the required reply (election)--Petitioner alleges non-receipt but does not evidence (e.g., with a due date docket sheet for 21 June, 2004) that the Office action was miss-docketed to another matter.

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).[3]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive

---

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.)

[2] A copy of this paper is enclosed with this decision.

[3] 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.

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.[4]

Delays in responding properly raise the question whether delays are unavoidable.[5] 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).[6] And the Petitioner must be diligent in attending to the matter.[7] 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.[8]))

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Although Petitioner has filed a petition under 37 C.F.R. §1.137(a), Petitioner also has requested withdrawal of the holding of abandonment under 37 C.F.R. §1.181, and as to that request Petitioner has failed to satisfy the "showing" burden as discussed above.

With regard to the petition to revive under 37 C.F.R. §1.137(a), Petitioner has failed to satisfy the "reply" requirement under the regulation.

CONCLUSION

The instant petition under 37 C.F.R. §1.137(a) hereby is **dismissed**.

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[4] 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.

[5] 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).

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

[7] 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.

[8] 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.

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

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

By FAX: IFW Formal Filings
(703) 872-9306
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

Encl.: Copy of the non-final Office action mailed 19 March, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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JJGJR.: 06-05

Paper No: 16

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JUN 14 2005

OFFICE OF PETITIONS

CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON MA 02210

In re Application of	:	
Spielberg	:	DECISION
Application No. 09/928,392	:	
Filing Date: 13 August, 2001	:	
Attorney Docket No. 15343-0028C3	:	

This is a decision on the renewed petition filed on 31 May, 2005, alleging, *inter alia*, unavoidable delay under 37 C.F.R. §1.137(a), alternatively requesting withdrawal of the holding of abandonment under 37 C.F.R. §1.181, and alleging unintentional delay under 37 C.F.R. §1.137(b).

For the reasons set forth below:

- the petition under 37 C.F.R.§1.137(a) is **GRANTED**;
- the petition as considered under 37 C.F.R.§1.181 is **DISMISSED**; and
- the petition under 37 C.F.R.§1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 19

March, 2004,[1] with reply due absent extension of time on or before Monday, 21 June, 2004;

- the instant application went abandoned after midnight 19 June, 2004;
- the Office mailed a Notice of Abandonment on 2 December, 2004;
- with the original petition (with fee authorization), Petitioner failed to submit the required reply (election) and alleged non-receipt but did not evidence non-receipt (and that the materials were not mis-docketed), and for those reasons the petition was dismissed on 28 February, 2005;
- the instant petitions were filed on 31 May, 2005, with fee authorizations and an amendment as the reply.

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 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

---

[1] A copy of this paper is enclosed with this decision.

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an 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).

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]))

Petitioner requests withdrawal of the holding of abandonment under 37 C.F.R. §1.181.

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[8]

While Petitioner made a showing that the Office action was not docketed to the instant application by Petitioner's office, Petitioner made no showing that the Office action was not mis-docketed by his office, and so failed to satisfy the "showing" burden as discussed above.

The requirements for a grantable petition under 37 C.F.R. §1.137(a) are the petition and fee, a showing of unavoidable delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995.

Petitioner has satisfied the requirements as to a petition under 37 C.F.R. §1.137(a).

CONCLUSION

The petition:

- under 37 C.F.R. §1.137(a) hereby is **granted**;
- as considered under 37 C.F.R. §1.181 is **dismissed**; and
- under 37 C.F.R. §1.137(a) is **dismissed as moot**.

---

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

[8] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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

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

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

In re Application of
Edward A. Brinskele
Application No. 09/928,435
Filed: August 14, 2001
For: **APPARATUS AND METHODS FOR PROVIDING HOSTED SERVICES OVER AN ASYNCHRONOUS TRANSFER MODE CONNECTION**

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 March 18, 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 listed in the request are withdrawn.

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.

Ken A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

CC:

Richard Rosenfeld
General Counsel
Vercuity, Inc.
500 Lanidex Plaza, 3rd Floor
Parsippany, NJ 07054

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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NIXON & VANDERHYE PC
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VIRGINIA 22203

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FEB 03 2006

OFFICE OF PETITIONS

In re Application of	:
Xavier Nassif et al	:
Application No. 09/928,457	: DECISION DISMISSING PETITION
Filed: August 14, 2001	: UNDER 37 CFR 3.81(b)
Attorney Docket No. 1721-34	:

This is a decision on the petition, filed December 29, 2004, 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) so that the Letters Patent will issue to the assignee.

The request is **dismissed**.

Petitioner states that the assignee's name appearing on the Part B - Fee(s) Transmittal form is incorrect and that the correct assignee's name is "**INSTITUT NATIONAL DE LA SANTE ET DE LA RECHERCHE MEDICALE (I.N.S.E.R.M.)**." Accordingly, petitioner requests that the patent issue to this assignee.

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

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

The request under 37 CFR 3.81(b) was not accompanied by a request for a certificate of correction (and fee) as required by 3.81(b). As petitioner has failed to comply with the provisions of 37 CFR 3.81(a), the request cannot be granted.

A review of Office database assignment records reflects that an assignment to the above-noted assignee has been recorded.

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[1] *See* Official Gazette of June 22, 2004

Therefore, upon submission of the required certificate of correction and fee of $100, it would be appropriate for the Office to issue a certificate of correction to correct the front page of the Letters Patent to reflect that "**INSTITUT NATIONAL DE LA SANTE ET DE LA RECHERCHE MEDICALE (INSERM) [without the periods]**," was the assignee of record at the time of issuance of the instant application into a patent. *Note also* 35 U.S.C. § 152.

In view of the above and **after issuance of this application into a patent, the Certificates of Correction Branch is instructed to issue a certificate of correction upon submission by petitioner of a request for a certificate of correction (and fee of $100) which sets forth "INSTITUT NATIONAL DE LA SANTE ET DE LA RECHERCHE MEDICALE (INSERM)," as the assignee**. *No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in this decision. A copy of this decision* ***must*** *accompany the request for a Certificate of Correction.*

No further renewed request under 37 CFR 3.81(b) is necessary for consideration by the Office of Petitions for issuance of a certificate of correction in the name of the assignee set forth in the request, as this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction upon submission of a certificate of correction and fee therefor.

Alternatively, if petitioner desires to have the correct assignee data appear on the front page of the Letters Patent, petitioner may wish to consider filing a petition to withdraw the subject application from issue under 37 CFR 1.313(c)(2). The petition to withdraw from issue under 37 CFR 1.313(c)(2) must be accompanied by a request for continued examination (RCE) and submission (which may be a renewed request under 37 CFR 3.81(b)).

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

After the submission by petitioner of the request for a certificate of correction to correct the assignee data on the front page of the Letters Patent, any questions pertinent thereto should be directed to the Certificates of Correction Branch at (703) 305-8309.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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APPLIED MATERIALS, INC.
2881 SCOTT BLVD. M/S 2061
SANTA CLARA, CA 95050

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OCT 1 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Badri N. Krishnamurthy et al	:	
Application No. 09/928,474	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. 6301/CONSILIUM/DV	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 21, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee/publication fee in a timely manner in reply to the Notice of Allowance mailed December 14, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 15, 2005.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of issue fee/publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

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

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.

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.

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

This matter is being referred to Publishing Division to be processed into a patent.

Wan Laymon
Petitions Examiner
Office of Petitions

Attachment: PTOL-85(b)

cc: WILMER CUTLER PICKERING HALE AND DORR
1455 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20004

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CHIEF PATENT COUNSEL
SMITH & NEPHEW, INC.
1450 BROOKS ROAD
MEMPHIS TN 38116

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FEB 19 2008

In re Application of	:	
Luiz R. Duarte et al.	:	
Application No. 09/928,594	:	ON PETITION
Filed: August 13, 2001	:	
Attorney Docket No. 41482/261574	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 8, 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 September 1, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). A two (2) 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 January 4, 2007. The Notice of Abandonment was mailed May 11, 2007.

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 $1,500; and (3) a proper statement of unintentional delay.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that

such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

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. 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. 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 Terri Williams at (571) 272-2991.

This application is being referred to Technology Center AU 3737 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Liana Walsh

Liana Walsh
Petitions Examiner
Office of Petitions

cc: **R. Scott Griffin**
Kilpatrick Stockton LLP
1100 Peachtree St., NE
Suite 2800
Atlanta, GA 30309

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George Gates
GATES & COOPER LLP
Howard Hughes Center
6701 Center Drive West, Suite 1050
Los Angeles, CA 90045

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JAN 30 2007

Technology Center 2100

In re Application of: Lee Anne KOWALSKI	)	
Application No. 09/928,599	)	DECISION ON PETITION FOR
Attorney Docket No. SVL920010049US1	)	SUPERVISORY REVIEW
Filed: 08/13/2001	)	UNDER *37 CFR §1.181*
For: METHOD AND SYSTEM FOR	)	
IDENTIFYING AND DISTINGUISHING	)	
WORDS CONTAINED WITHIN AN		
ELECTRONIC MESSAGE IN ORDER TO		
CONVEY SIGNIFICANCE		

This is a decision on the petition under 37 CFR § 1.181, filed October 25, 2006 requesting the Commissioner to invoke his supervisory authority and withdraw the finality of the Final Office action mailed October 5, 2006 and to request review of the sufficiency and propriety of the declarations under 37 C.F.R. §1.131 filed on September 20, 2005, February 27, 2006 and July 19, 2006.

The petition is **GRANTED**.

RECENT PROSECUTION HISTORY

(1) On November 29, 2005, a non-final Office action, treating all pending claims, was mailed. The Office action found the declaration and evidence submitted under 37 C.F.R. §1.131 on September 20, 2005 to be insufficient for various reasons as outlined therein.

(2) On February 27, 2006, an amendment, response, further evidence and a declaration under 37 C.F.R. §1.131 were filed by Applicant.

(3) On April 25, 2006, a final Office action, treating all pending claims, was mailed. This action provided rational for the insufficiency of the declaration and evidence filed on February 27, 2006 under 37 CFR §1.131.

(4) On July 19, 2006, an amendment, remarks, an additional declaration and evidence under 37 C.F.R. § 1.131 and Request for Continuing Examination were filed.

(5) On October 5, 2006, a final Office action was mailed, including supporting rationale for the insufficiency of the declaration and evidence filed on July 19, 2006 under 37 CFR §1.131.

(6) On October 25, 2006, the instant petition under 37 C.F.R. §1.181 was filed.

(7) On January 5, 2007 a notice of appeal was filed.

RELIEF REQUESTED

The instant petition filed under 37 CFR 1.181 requests the following relief: withdrawal of the finality of the October 5, 2006 office action as prosecution was alleged to have been prematurely closed; and review of the sufficiency and propriety of the declarations under 37 C.F.R. §1.131, in accordance with M.P.E.P. 715.08.

REQUIREMENTS

A petition under 37 CFR §1.181 must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. Note, 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. In addition § 1.181(f) sets forth: 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.

The petition initially filed on October 25, 2006 includes elements (1) and (2) above. The petition was filed within two months of the final Office action from which the relief is requested.

ANALYSIS

A review of the sufficiency and propriety of the declarations under 37 C.F.R. §1.131, will be addressed first.

Petitioner presents the following arguments in support of the position that the declaration under 37 C.F.R. §1.131 should be considered:

> The declaration submitted by Applicant's attorney (George H. Gates) is eligible for consideration in the showing of diligence and should be considered by the Examiner, as it supplements the declarations submitted by Lee Anne Kowalski and Jeanette Berry Souza in accordance with M.P.E.P. §2138.04.
>
> The Office action asserts that the declarations (and evidence) fail to establish conception and diligence in reduction to practice. Petitioner submits that the assertions regarding identifying claim limitations and the showing of facts versus pleadings, made by the Examiner in the Office action are erroneous.

The relevant section of the MPEP concerning consideration of evidence is set forth in MPEP § 715.07. In the language of the MPEP:

> However, ***when reviewing a 37 CFR 1.131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and "notes."*** An accompanying exhibit need not support all claimed limitations, provided that any missing limitation is supported by the declaration itself. Ex parte Ovshinsky, 10 USPQ2d 1075 (Bd. Pat. App. & Inter. 1989).

> When alleging that conception or a reduction to practice occurred prior to the effective date of the reference, the dates in the oath or declaration may be the actual dates or, if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date. However, the actual dates of acts relied on to establish diligence must be provided. See MPEP § 715.07(a) regarding the diligence requirement.

Further, MPEP § 2138.06 sets forth (in part):

> ***The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor.*** Conception was established at least as early as the date a draft of a patent application was finished by a patent attorney on behalf of the inventor. Reasonable diligence is all that is required of the attorney.

Therefore, the Examiner's remarks "Thus the 131 declaration signed by Applicant's legal representation is ***not eligible for consideration*** by the Examiner", in support of a showing of diligence by the attorney, in the final rejection of April 25, 2006, and maintained in the most recent final rejection of October 5, 2006, is inconsistent with the guidance set forth in MPEP § 715.07 and § 2138.06.

Note and with respect to Petitioner's arguments regarding the Examiner's indication of insufficiencies with respect to the evidence in support of identified of claim limitations and the showing of facts versus mere pleadings, that are indicated to be "erroneous", as stated by Petitioner, are determined by this reviewing official to be in effect a review of the merits of the evidence submitted. Since, M.P.E.P. 715.08 sets forth that:

> Review on the merits of a 37 CFR 1.131 affidavit or declaration is by appeal to the Board of Patent Appeals and Interferences.

It is determined that these arguments are best treated by decision under appeal before the Board.

Therefore, in accordance with current Office practice and procedures, the Examiner's determination that the declaration submitted by Applicant's legal representative is "not eligible for consideration by the Examiner" is improper.

OPINION

As a result of the relief granted for review of the sufficiency and propriety of the declaration under 37 C.F.R. §1.131, the requested relief to withdraw the finality of the October 5, 2006 Office action under 37 C.F.R. 1.181, is also granted as a matter of due course.

CONCLUSION

For the above stated reasons, the petition for supervisory review of the finality of the Office action mailed October 5, 2006 and to review of the sufficiency and propriety of the declarations under 37 C.F.R. §1.131, specifically, to consider the declaration submitted attorney George H. Gates in support of a showing of diligence by the attorney, is **GRANTED**.

The application is being forwarded to the Examiner to reopen prosecution, in particular, for consideration of the declaration filed under 37 CFR §1.131 by attorney George Gates on February 27, 2006, consistent with this decision.

Any inquiries related to this decision may be directed to Brian Johnson at (571) 272-3595.

Brian L. Johnson
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and Information Security

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JJGJr.: 05-05

Paper No. __

GARLICK HARRISON
& MARKISON LLP
P.O. BOX 160727
AUSTIN TX 78716-0727

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OFFICE OF PETITIONS

In re Application of	:	
Berman, et al.	:	
Application No. 09/928,622	:	DECISION
Filed: 13 August, 2001	:	ON PETITION
Attorney Docket No.: BP1520	:	

This is a decision on the petition under 37 C.F.R. §1.78(a)(3) and (a)(6), filed 23 August, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §120 and 35 U.S.C. §119(e) for the benefit of priority to, respectively, a prior filed:

- nonprovisional application (09/886,859, filed 21 June, 2001); and
- provisional application (Application No. 60/213,140, filed 22 June, 2000).

The petition is **GRANTED**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed:

- nonprovisional application was made within the time period set forth in 37 C.F.R. §1.78(a)(2)(ii) and further failed to include a proper reference to the above-noted, prior-filed application as required by 37 C.F.R. §1.78(a)(2)(i) and §1.78(a)(2)(iii); and
- provisional application was made within the time period set forth in 37 C.F.R. §1.78(a)(5)(ii) and further failed to include a proper reference to the above-noted, prior-filed application as required by 37 C.F.R. §1.78(a)(5)(i) and §1.78(a)(5)(iii).

The instant application was filed on 13 August, 2001. Therefore, since this application was filed after November 29, 2000, a petition under 37 C.F.R. §1.78(a)(3) and (a)(6) is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application and a prior-filed provisional application, respectively.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) and(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 C.F.R. §1.78(a)(2)(ii) and §1.78(a)(5)(ii).

The petition under 37 C.F.R. §1.78(a)(3) must be accompanied by:

- the reference required by 35 U.S.C. §120 and 37 C.F.R. §1.78(a)(2)(i) of the prior-filed application, unless previously submitted;[1]
- the surcharge set forth in §1.17(t); and
- a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

T``he petition under 37 C.F.R. §1.78(a)(6) must be accompanied by:

- the reference required by 35 U.S.C. §119(e) and 37 C.F.R. §1.78(a)(5)(i) of the prior-filed application, unless previously submitted;[2]
- the surcharge set forth in §1.17(t); and
- a statement that the entire delay between the date the claim was due under 37 C.F.R. §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 granting of a petition to accept the delayed benefit claim to the prior-filed application(s) under 37 C.F.R. §1.78(a)(3) and (a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under the statute and regulation must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision includes the prior-filed application(s) should not be construed as meaning that the 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.

Application No. 09/928,622

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

This matter is being referred to Technology Center 2100 for further processing in due course.

Inquiries concerning this decision may be directed to John Gillon, Senior Attorney, Office of Petitions at (571) 272-3214.

Frances Hicks
Petitions Examiner
Office of Petitions

Encl.: Corrected Filing Receipt

[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 filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

[2] See: Fn. 1.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mark Levy
HINMAN, HOWARD & KATTELL, LLP
80 Exchange Street
P.O. Box 5250
BINGHAMTON NY 13901

Paper No. 9

COPY MAILED

MAR 10 2009

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,727,014 :
Issued: April 27, 2004 :
Application No. 09/928,719 :
Filed: August 13, 2001 :
Attorney Docket No. HPC-111 :
For: FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE

This is a decision on the reconsideration petition under 37 CFR 1.377, filed December 8, 2008, to accept and record the 3 ½ year maintenance fee and surcharge for the above-identified patent.

The petition is **granted**.

The patent issued April 27, 2004. The first maintenance fee could have been paid without a surcharge from April 27, 2007 through October 27, 2007, or with a surcharge from October 28, 2007 through April 27, 2008. Petitioner asserts that a check for $530.00 for the$465.00 3 ½ year maintenance fee and the $65.00 surcharge was mailed on certificate of mailing date February 11, 2008 and received by the Office on February 20, 2008. As February 11, 2008 was within the window period to pay the 3 ½ year maintenance fee, petitioner argues that the patent is not expired.

A review of Office financial records indicates that the $530.00 check was refunded on April 14, 2008 because Office records erroneously indicated that this patent was large entity. Thus, the $530.00 small entity fee was deemed insufficient and refunded.

It is noted that applicant paid the small entity filing fee when the application was filed on August 13, 2001. Per 37 CFR 1.27(c)(3), paying the small entity basic filing fee is considered to be an assertion of small entity status. All fees paid in this application have been paid at the small entity rate. Therefore, the small entity 3 ½ year maintenance fee and surcharge, filed on certificate of mailing date February 11, 2008 were timely paid under 37 CFR 1.362(e) and should have been accepted and recorded.

The petition is granted. No fee will be charged in connection with this matter.

The patent file is being forwarded to Files Repository.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mark Levy
HINMAN, HOWARD & KATTELL, LLP
80 Exchange Street
P.O. Box 5250
BINGHAMTON NY 13901

Paper No. 7

COPY MAILED

NOV 0 5 2008

OFFICE OF PETITIONS

ON PETITION

In re Patent No. 6,727,014 :
Issued: April 27, 2004 :
Application No. 09/928,719 :
Filed: August 13, 2001 :
Attorney Docket No. HPC-111 :
For: FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE

This is a decision on the reconsideration petition under 37 CFR 1.377, filed August 29, 2008, to accept and record the 3 ½ year maintenance fee for the above-identified patent.

The petition is **dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.377." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The patent issued April 27, 2004. The first maintenance fee could have been paid without a surcharge from April 27, 2007 through October 27, 2007, or with a surcharge from October 28, 2007 through April 27, 2008. Petitioner asserts that a check for $530.00 for the 3 ½ year maintenance fee and the $65.00 surcharge was mailed on certificate of mailing date February 11, 2008 and received by the Office on February 20, 2008. As February 11, 2008 was within the window period to pay the 3 ½ year maintenance fee, petitioner argues that the patent is not expired.

A review of Office financial records indicates that the $530.00 check was refunded on April 14, 2008 because Office records erroneously indicated that this patent was large entity. Thus, the $530.00 small entity fee was deemed insufficient and refunded.

It is noted that applicant paid the small entity filing fee when the application was filed on August 13, 2001. Per 37 CFR 1.27(c)(3), paying the small entity basic filing fee is considered to be an assertion of small entity status. All fees paid in this application have been paid at the small entity rate. Therefore, the small entity 3 ½ year maintenance fee and surcharge, filed on certificate of mailing date February 11, 2008 should have been accepted and recorded.

However, the petition will not be granted at this time because the $530.00 payment was refunded on April 14, 2008. Petitioner is requested to re-submit the $530.00 owed.

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

O I P E IAP3
DEC 08 2008
PATENT & TRADEMARK OFFICE

2008 DEC 11 PM 12

Box 4 #-1

#8

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.	:	6,727,014	Conf. No.: 6827
Issue Date	:	April 27, 2004	
Docket No.	:	HPC-111	
Title	:	FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE	
Customer No.	:	41245	

RECEIVED
DEC 15 2008
OFFICE OF PETITIONS

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

03/11/2009 CKHLOK 00000010 6727014
01 FC:2551 465.00 OP
02 FC:2554 65.00 OP

12/12/2008 DALLEN 00000012 6727014
01 FC:2551 490.00 OP

RENEWED PETITION
PURSUANT TO 37 C.F.R. §1.377

S I R:

This is a Renewed Petition in response to the Decision dated November 5, 2008. Applicant respectfully petitions to withdraw the abandonment for the above-identified patent, which was allegedly abandoned for failure to pay the maintenance fee.

The undersigned is hereby resubmitting a check (enclosed) in the amount of $530 to replace the original check, which was refunded on April 14, 2008.

Respectfully submitted,

HINMAN, HOWARD & KATTELL, LLP

12/12/2008 DALLEN 00000013 6727014
01 FC:1599 40.00 OP

Dated: December 3, 2008

By:

Mark Levy
Registration No. 29188
Attorney for Patentee
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13901
Phone: (607) 231-6991

Adjustment date: 03/11/2009 CKHLOK
12/12/2008 DALLEN 00000013 6727014
01 FC:1599 -40.00 OP

Adjustment date: 03/11/2009 CKHLOK
12/12/2008 DALLEN 00000012 6727014
01 FC:2551 -490.00 OP

#6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.	:	6,727,014	Conf. No.: 6827
Issue Date	:	April 27, 2004	
Docket No.	:	HPC-111	
Title	:	FUEL CELL REACTANT AND COOLING FLOW FIELDS	
	:	INTEGRATED INTO A SINGLE SEPARATOR PLATE	
Customer No.	:	41245	

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

REQUEST FOR RECONSIDERATION OF PETITION TO WITHDRAW ABANDONMENT PURSUANT TO 37 C.F.R. §1.377

S I R:

This is a Request for Reconsideration for the Petition to the Petition filed June 9, 2008, pursuant to the Decision dated August 15, 2008. Applicant respectfully petitions to withdraw the abandonment for the above-identified patent, which was allegedly abandoned for failure to pay the maintenance fee.

In fact, however, the maintenance fee and surcharge were mailed to the Office on February 11, 2008 (Exhibit A). The undersigned's office received an acknowledgment postcard on February 25, 2008 (Exhibit B).

Enclosed herewith is a check in the amount of $200 for the Petition fee. Since the abandonment was due to no fault of the Patentee or his attorney, the undersigned hereby respectfully requests a refund of the Petition fee.

Respectfully submitted,

HINMAN, HOWARD & KATTELL, LLP

Dated: August 29, 2008

By:

Mark Levy
Registration No. 29188
Attorney for Patentee
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13901
Phone: (607) 231-6991

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mark Levy
HINMAN, HOWARD & KATTELL, LLP
80 Exchange Street
P.O. Box 5250
BINGHAMTON NY 13901

Paper No. 5

COPY MAILED

AUG 15 2008

In re Patent No. 6,727,014 :
Issued: April 27, 2004 :
Application No. 09/928,719 : ON PETITION
Filed: August 13, 2001 :
Attorney Docket No. HPC-111 :
For: FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE

This is a decision on the petition entitled, "**PETITION TO WITHDRAW ABANDONMENT PURSUANT TO 37 C.F.R. 1.137(b)**", filed June 9, 2008. As the petition pertains to an expired patent, not an abandoned application, the petition will be treated under 37 CFR 1.377 as a request to accept and record the 3 ½ year maintenance fee and surcharge for the above-identified patent.

The petition is **dismissed**.

Any request for reconsideration of this decision or a petition under 37 CFR 1.377 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 patent issued April 27, 2004. The 3 ½ year maintenance fee could have been paid without a surcharge from April 27, 2007 through October 27, 2007, or with a surcharge from October 28, 2007 through April 27, 2008. No maintenance fee was received. The patent expired on April 28, 2008.

Petitioner argues that the 3 ½ year maintenance fee and surcharge were timely paid on February 11, 2008.

Petitioner has not submitted the full $200.00 fee (a 1.17(g) fee) associated with filing a petition under 37 CFR 1.377. The merits of the petition will not be addressed until petitioner submits the petition fee. A request for refund may be filed in the same paper as the request for reconsideration.

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

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

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

#4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No.	:	6,727,014	Conf. No.: 6827
Issue Date	:	April 27, 2004	
Docket No.	:	HPC-111	
Title	:	FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE	
Customer No.	:	41245	

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

PETITION TO WITHDRAW ABANDONMENT PURSUANT TO 37 C.F.R. §1.137(b)

S I R:

Applicant respectfully petitions to withdraw the abandonment for the above-identified patent, which was allegedly abandoned for failure to pay the maintenance fee.

In fact, however, the maintenance fee was mailed to the Office on February 11, 2008 (Exhibit A). The undersigned's office received an acknowledgment postcard on February 25, 2008 (Exhibit B).

Due to the above-mentioned facts, supporting that the abandonment was due to no fault of Applicant or his attorney, a petition fee is not deemed necessary and hereby respectfully requests that the abandonment be withdrawn.

Respectfully submitted,
HINMAN, HOWARD & KATTELL, LLP

By: Mark Levy
Registration No. 29188
Attorney for Patentee
80 Exchange Street
P.O. Box 5250
Binghamton, New York 13901
Phone: (607) 231-6991

Exhibit A

Doc Code:

PTO/SB/45 (12-04)
Approved for use through 08/30/2006. OMB 0651-0016
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

MAINTENANCE FEE TRANSMITTAL FORM

HPC-111

Address to:
U.S. Patent and Trademark Office
P.O. Box 371611
Pittsburgh, PA 15250-1611

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "United States Patent and Trademark Office, P.O. Box 371611, Pittsburgh, PA 15250-1611".

on 2-11-8

Signature Sheri Tyler

Typed or printed name Sheri Tyler

Enclosed herewith is the payment of the maintenance fee(s) for the listed patent(s).

1. ☒ A check for the amount of $ 530.00 for the full payment of the maintenance fee(s) and any necessary surcharge on the following

2. ☐ The Director is hereby authorized to charge $ _____ to cover the payment of the fee(s) indicated below to Deposit Account No. _____. A duplicative copy of this form is enclosed.

3. ☐ The Director is hereby authorized to charge any deficiency in the payment of the required fee(s) or credit any overpayment to Deposit Account _____. A duplicative copy of this form is enclosed.

4. ☐ Payment by credit card. Form PTO-2038 is attached.

*Information required by 37 CFR 1.366(c) (columns 1 & 4). Information requested under 37 CFR 1.366(d) (columns 2, 3, & 5)

Item	Patent Number* Column 1	Maintenance Fee Amount (37 CFR 1.20 (e)-(g)) Column 2	Surcharge Amount (37 CFR 1.20(h)) Column 3	U.S. Application Number* [e.g., 08/555,555] Column 4	Payment Year Column 5		
					3.5 yrs	7.5 yrs	11.5 yrs
1	6,727,014	465.00	65.00	09/928,719	✓		
2							
3							
4							
5							
Subtotals: Columns 2 & 3		465.00	65.00				
Total Payment		$530.00					

☐ ____ additional sheets attached for listing additional patents.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Respectfully submitted,***

Customer's Signature:

Customer's name: Mark Levy

Registration Number, if applicable: 29,188

Telephone: 607-723-6600

Fax: 607-724-2207

Note. *All correspondence will be forwarded to the "Fee Address" or to the "Correspondence Address" if no "Fee Address" has been provided. See 37 CFR 1.363.

Payment of small entity fee is appropriate if small entity status still exists, see 37 CFR 1.27(g). To establish small entity status or to change status from small to large entity, note the requirements of 37 CFR 1.27 and 1.33 (b).

**WHERE MAINTENANCE FEE PAYMENTS ARE TO BE MADE BY AUTHORIZATION TO CHARGE A DEPOSIT ACCOUNT, BOTH THE NAME AND SIGNATURE OF AN AUTHORIZED USER ARE REQUIRED.

This collection of information is required by 37 CFR 1.366. This 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 0.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending on 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: United States Patent and Trademark Office, PO Box 371611, Pittsburgh, PA 15250-1611.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

MARK LEVY & ASSOCIATES, PLLC
18 CHENANGO STREET, SUITE 902
BINGHAMTON, NY 13901
PH: (607) 722-6600

CITIZENS BANK
29-7003/2213

21594

2/11/2008

PAY TO THE ORDER OF Director of the USPTO $ **530.00

Five Hundred Thirty and 00/100********** DOLLARS

Director of the USPTO
PO BOX 1450
Alexandrea, VA 22313-1450

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MEMO HPC-111 Maintenance

[redacted]

Please Acknowledge and Return Date Mailed: 2-11-08

- ☐ Application (TM/SM/Utility Patent/Provisional Patent/Design Patent) (_____ pages)
- ☐ Transmittal Form
- ☐ Declaration
- ☐ Power of Attorney
- ☐ Issue Fee Transmittal
- ☒ Maintenance Fee Transmittal
- ☒ Check No. 21594
- ☐ Non Publication Request
- ☐ Other _____
- ☐ Fee Transmittal
- ☐ ____ Drawing Sheets
- ☐ Amendment/Response (____ pages)
- ☐ Specimen(s)
- ☐ Assignment
- ☐ Information Disclosure Statement
- ☐ Request for Extension of Time

Title: FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE

Applicant: James D. Wilson, Arthur Kaufman

Docket No.: HPC-111 Serial No.: 09/928,719

Patent No.: _____

Exhibit B

Please Acknowledge and Return Date Mailed: 2-11-08

- [ ] Application (TM/SM/Utility Patent/Provisional Patent/Design Patent) (_____ pages)
- [ ] Transmittal Form
- [ ] Declaration
- [ ] Power of Attorney
- [ ] Issue Fee Transmittal
- [x] Maintenance Fee Transmittal
- [x] Check No. 21594
- [ ] Non Publication Request
- [ ] Other _____

Received US Bank
FEB 20 2008
Gov't. LBX Operations

- [ ] Fee Transmittal
- [ ] ____ Drawing Sheets
- [ ] Amendment/Response (____ pages)
- [ ] Specimen(s)
- [ ] Assignment
- [ ] Information Disclosure Statement
- [ ] Request for Extension of Time

Title: FUEL CELL REACTANT AND COOLING FLOW FIELDS INTEGRATED INTO A SINGLE SEPARATOR PLATE

Applicant: James D. Wilson, Arthur Kaufman

Docket No.: HPC-111 Serial No.: 09/928,719

Patent No.: _____

Mark Levy & Associates, PLLC
Press Building - Suite 902
19 Chenango Street
Binghamton, New York 13901

INVENTORS DO IT
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FEB 25 2008
Mark Levy & Associates, PLLC

Mark Levy & Associates, PLLC
Press Building - Suite 902
19 Chenango Street
Binghamton, New York 13901

01+2914

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

William O'Driscoll – 12-1
The Trane Company
3600 Pammel Creek Road
La Crosse, WI 54601

COPY MAILED
SEP 12 2003
OFFICE OF PETITIONS

In re Application of :
Randy E. Dewhirst et al. :
Application No. 09/928,725 : ON PETITION
Filed: August 13, 2001 :
Attorney Docket No. D-2550A/WOD :

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 to the Notice of Non-Compliant Amendment filed April 3, 2003, which set a shortened statutory period for reply of One Month or Thirty Days from the mailing of this notice, whichever is longer, within which to supply the omission or correction noted above in order to avoid abandonment. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on May 3, 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 3745.

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
www.uspto.gov

HARRIS ZIMMERMAN
LAW OFFICES OF HARRIS ZIMMERMAN
SUITE 710
1330 BROADWAY
OAKLAND CA 94612-2506

COPY MAILED

OCT 30 2006

OFFICE OF PETITIONS

In re Application of	:	
Denny Jaeger	:	
Application No. 09/928,726	:	ON PETITION
Filed: August 13, 2001	:	
Attorney Docket No. 4143/CIP-3		

This is a decision on the "PETITION TO REVIVE ABANDONED APPLICATION PURSUANT TO F.R.C.P §1.181", filed September 24, 2004, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181. The petition was recently forwarded to the Office of Petitions for consideration.

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

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a response to the final Office action mailed January 6, 2004, which set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on April 7, 2004. A Notice of Abandonment was mailed on September 14, 2004.

The instant petition does not contain a signature. Pursuant to 37 CFR 1.4(d), correspondence filed with the Office must contain a handwritten or S-signature.

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: (501)273-8300
Attn: Office of Petitions

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HARRIS ZIMMERMAN
LAW OFFICES OF HARRIS ZIMMERMAN
SUITE 710
1330 BROADWAY
OAKLAND CA 94612-2506

COPY MAILED

MAR 26 2007

OFFICE OF PETITIONS

In re Application of :
Denny Jaeger :
Application No. 09/928,726 : ON PETITION
Filed: August 13, 2001 :
Attorney Docket No. 4143/CIP-3

This is a decision on the renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed November 8, 2006.

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

The above-identified application became abandoned for failure to timely file a response to the final Office action mailed January 6, 2004, which set a shortened statutory period for reply of three (3) months. No reply having been received, the application became abandoned on April 7, 2004. A Notice of Abandonment was mailed on September 14, 2004. Applicant filed a petition to withdraw the holding of abandonment on September 24, 2004. However, the petition was dismissed in a decision mailed on October 30, 2006. The petition lacked a signature in accordance with 37 CFR 1.4(d).

With the instant petition, petitioner argues that he timely filed a reply to the final Office action on January 23, 2004. In support thereof, petitioner has supplied a copy of a USPTO date stamped, itemized postcard receipt, itemizing an amendment and bearing a USPTO date stamp of January 23, 2004.

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 holding of abandonment is **WITHDRAWN**.

The file is being forwarded to Group Art Unit 2674 for consideration of the amendment filed January 23, 2004 (a copy of which was supplied with the earlier filed petition and the instant renewed petition).

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

Cliff Congo
Petitions Attorney
Office of Petitions

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United States Patent and Trademark Office
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DIW 04-05

LOCKE, LIDDELL & SAPP, LLP
3400 CHASE TOWER
600 TRAVIS STREET
HOUSTON TX 77002-3095

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APR 12 2005

OFFICE OF PETITIONS

In re Application of	:	
Parks et al.	:	
Application No. 09/928,764	:	ON PETITION
Filed: 13 August, 2001	:	
Atty Dkt No. 019131-02700 (44446US)	:	

This is a decision on the petition under 1.137(b),[1] filed on 13 December, 2004, to revive the above-identified application.

The petition is **DISMISSED AS MOOT**.

On 13 August, 2001, the above-identified application was filed.

---

[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)).

On 13 September, 2004, a Notice of Appeal was filed.

On 13 December, 2004 (certificate of mailing 8 December, 2004), an Appeal Brief and the present petition to revive were filed.

Since the Appeal Brief filed on 13 December, 2004, was filed within the extendable period for reply to the final Office action, in accordance with 37 CFR 1.136(a), the application did not become abandoned.[2] The petition under 37 CFR 1.137(b) is therefore unnecessary and will be dismissed as moot. Rather, applicants will be charged for a one (1) month extension of time.

The remaining balance of $1,380.00 will be credited to counsel's deposit account, No. 12-1322, as authorized in the present petition.

The application is being referred to Technology Center Art Unit 1711 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[2] See MPEP 1206.

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3400 CHASE TOWER
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HOUSTON TX 77002-3095

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JAN 05 2009

OFFICE OF PETITIONS

In re Application of :
Parks et al. :
Application Number: 09/928764 :
Filing Date: 08/13/2001 : ON PETITION
Attorney Docket Number: 44446A :

This is a decision on the petition under 37 CFR 1.137(b)[1] filed on December 12, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on January 11, 2008, for failure to timely submit a reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed on December 10, 2007, which set a one (1)-month shortened period for reply. No extensions of tiem time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Bandonment was mailed on July 16, 2008.

Receipt of the amendment filed with the present petition is acknowledged.

---

[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 Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

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.[2] 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 Revocation and Power of Attorney filed with the subject petition cannot be accepted because petitioners have not established a chain of title from the inventor(s) of the application for patent to the current assignee. Petitioners have provided a statement under 37 CFR 3.73(b) including an assignment from The Dow Chemical Company to Dow Global Technologies, Inc. However, there is no assignment recorded or provided showing the transfer of ownership from the three named inventors who signed the declaration filed on August 13, 2001, to The Dow Chemical Co.

Likewise, the change of correspondence address cannot be accepted because it is not signed by an attorney of record. As stated above, the power of attorney submitted with the subject petition cannot be accepted because a chain of title from the inventors to the current assignee has not been provided.[3] A change of correspondence address may not be signed by an attorney or agent not of record (see MPEP § 405). See MPEP 601.03.

Petitioners should submit a new revocation and power of attorney, accompanied by a statement under 37 CFR 3.73(b), showing a chain of ownership from the inventor(s) of the patent application to the current assignee. Petitioners may also wish to consider recording the assignment(s) in the USPTO.

A courtesy copy of this decision will be mailed to the address in the petition. All future correspondence, however, will be mailed solely to the address of record.

---

[2] See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

[3] The assignment filed on December 12, 2008 from The Dow Chemical Company to Dow Global Technologies, Inc., references an assignment from the inventors to the Dow Chemical Company, but no copy of said assignment has been provided, and no reel and frame numbers showing where the assignment is recorded has been provided.

This application is being referred to Technology Center Art Unit 1796 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

Cc:

BRONWYN WELVAERT
THE DOW CHEMICAL CO.
2040 DOW CENTER
MIDLAND MI 48674

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 9

MORRISON & FOERSTER LLP
755 PAGE MILL RD
PALO ALTO CA 94304-1018

In re Application of	:	
Qu et al.	:	
Application No. 09/928,883	:	DECISION GRANTING
Filed: 13 August, 2001	:	PETITION
Attorney Docket No. 458172000300	:	

This is a decision on the petition filed on 27 September, 2002, requesting that the "Notice to File Corrected Application Papers" mailed on 31 July, 2002, in the above-identified application be vacated to the extent that it states that Figure 23A described in the specification appeared to have been omitted from the application.

The application was filed on 13 August, 2001. However, on 31 July, 2002, the Office mailed a "Notice to File Corrected Application Papers" stating that the application had been accorded a filing date of 13 August, 2001, and advising applicants that, *inter alia*, Figure 23A described in the specification appeared to have been omitted from the application.

In response, the present petition was filed, accompanied by a petition fee of $130.00. Petitioners assert that Figure 23A was not missing from the application as filed on 13 August, 2001.

Upon a review of the application file, one (1) sheet of drawings containing Figure 23A of the drawings has been located among the application papers filed on 13 August, 2001. Therefore, Figure 23A does not appear to have been omitted from the application papers filed on 13 August, 2001.

The petition is **granted**. The "Notice" is vacated to the extent that it stated that Figure 23A appeared to have been omitted.

The petition fee of $130.00 will be refunded to counsel's deposit account, No. 08-0750 as authorized in the present petition.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 13 August, 2001, using the application papers filed on that date.

Any 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 & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR **PATENT** FEE REFUND

1 Date of Request: 10/23/02

2 Serial/Patent # 09/928883

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
122	Petition	8	9-27-02	$ 130 —
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130 —

8 TO BE REFUNDED BY:

	Treasury Check
	Credit Deposit A/C #:
	9 0 3 -- 1 9 5 2

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

DUE TO PTO ERROR

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: D WOOD TITLE: ATTY ADV

SIGNATURE: DW PHONE: 308-615

OFFICE: PET

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Kelly DATE: 10/25/02

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

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

FORM PTO 1577
(01/90)

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Paper No. 14

Katten Muchin Zavis Rosenman
1025 Thomas Jefferson Street, NW
East Lobby, Suite 700
Washington, DC 20007-7570

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OCT 20 2004

OFFICE OF PETITIONS

In re Application of :
George B. McDonald, et. al. :
Application No. 09/928,890 :
Filed: August 13, 2001 :
Attorney Docket No. 215064.00025 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 26, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Restriction mailed September 11, 2002, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight October 11, 2002.

In response, petitioner submitted with the instant petition $665 for the petition to revive fee, and an election.

The petition is **GRANTED**.

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

The application file is being forwarded to Technology Center Art Unit 1616 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
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Patent Administrator
Katten Muchin Zavis Rosenman
525 West Monroe Street, Suite 1600
Chicago, IL 60661-3693

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Paper No. 112503

NOV 24 2003

FISH & RICHARDSON P.C.
3300 DAIN RAUSCHER PLAZA
60 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402

In re Application of	)	
Kalnitsky et al.	)	
Application No. 09/928,914	)	DECISION ON REQUEST TO
Filed: August 13, 2001	)	WITHDRAW FROM RECORD
For: Attorney Docket No. 07927-033001 /	)	
MAXIM-279		

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed November 5, 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 request meets all the above listed requirements.

The request is APPROVED.

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

Jose G. Dees, Special Program Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: MAXIM INTEGRATED PRODUCTS, INC.
120 San Gabriel Drive
Sunnyvale, CA 94086

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 5

Akin, Gump, Srauss, Hauer & Feld, L.L.P
300 West 6th Street
Suite 2100
Austin, TX 78701

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DEC 0 6 2002

Technology Center 2100

In re Application of: Shepard S.B. Shi, et al.	)	
Application No. 09/928,925	)	
Filed: August 13, 2001	)	**DECISION ON REQUEST FOR**
For: HYBRID REPLICATION SCHEME	)	**WITHDRAWAL AS ATTORNEY**
WITH DATA AND ACTIONS FOR	)	
WIRELESS DEVICES	)	

This is a decision on the Request To Withdraw from Representation filed November 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 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: Joseph Chung
Foxconn International, Inc.
1650 Memorex Drive
Santa Clara, CA 95050

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 7

Barry E. Bretschneider
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888

SEP - 6 2002

In re Application of	)	
Michael Binnard	)	
Application No. 09/929,025	)	DECISION ON REQUEST TO
Filed: August 15, 2001	)	WITHDRAW FROM RECORD
For: WAFER STAGE WITH MAGNETIC	)	
BEARINGS	)	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed November 7, 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 request is signed by Barry E. Bretschneider on 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.

for Hien H. Phan, Special Program Examiner
TC 2800 - Semiconductor, Electrical and
Optical Systems and Components

cc: David Hill, Esq.
Finnegan, Henderson, Farabow, Garrett &
Dunner, LLP
1300 I Street, N.W.
Suite 700
Washington, D.C. 20005-3315

UNITED STATES PATENT AND TRADEMARK OFFICE

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Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street
Washington DC 20036

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FEB 05 2003

OFFICE OF PETITIONS

In re Application of	:DECISION GRANTING PETITION
Garahi et al.	:UNDER 37 CFR 1.137(b)
Application No. 09/929,030	:
Filed: August 15, 2001	:
Attorney Docket No. 41747	:

This is in response to the "Petition under 37 CFR 1.181 to Consider .... Abandonment," filed November 12, 2002, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application .

The petition to revive the instant nonprovisional application under 37 CFR 1.137(b) is **GRANTED**.

The petition includes a copy of the "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (11-00), signed August 15, 2002 (received by the USPTO on August 15, 2002), and a "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (10-01), signed November 12, 2002. Petitioner argues that the first-filed request to rescind should be treated as a notification of foreign filing. Petitioner argues that language added to the USPTO form for a Request to Rescind was already implicit in the previous version of the USPTO form, and that "the filing of a Request to Rescind is a tacit notice to the Director that the subject application is being filed internationally and/or in one or more foreign states." Furthermore, petitioner states that 35 U.S.C. § 122(b)(2)(B)(iii) does not specify a format in which the notice must be given, and that by filing of the rescission notice just prior to the anniversary of the filing date, applicant provided "*de facto* notice that one or more foreign or international filings have occurred or would be occurring." Moreover, petitioner argues that filing an international application in the PCT Receiving Office can also be considered sufficient notice to the Director. Lastly, petitioner quotes from 35 U.S.C. § 122(b), and relies upon the phrase "regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional" to argue that Congress intended applications to only be considered abandoned where the delay is shown to have been intentional. In the alternative, petitioner requests that the petition be treated under 37 CFR 1.137(b).

35 U.S.C. § 122(b)(2)(B) states:

> (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.

37 CFR 1.213 implements the provisions of 35 U.S.C. § 122(b)(2)(B).

Most patent applications filed on or after November 29, 2000 will be published, unless applicant files a request for nonpublication in compliance with 37 CFR 1.213(a). A nonpublication request is required to contain a certification that "the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement that requires publication at eighteen months after filing." Applicants who do not plan to file in another country are not required to file such a certification, and given that provisional rights (see 35 U.S.C. § 154(d)) may be available to those who have their patent applications publish, some applicants who do not plan to file in another country may elect to have their application published to be eligible for provisional rights. As a result, the filing of a rescission of a nonpublication request does not imply that the invention has been or will be filed in another country, and instead suggests that applicant now desires to have the application published in the United States.

Furthermore, 35 U.S.C. § 122(b)(2)(B)(ii) addresses rescission. If all rescissions provided notice of foreign filing, then 35 U.S.C. § 122(b)(2)(B)(iii), which requires applicants to provide notice of foreign filing within a set time period, would have provided that the "rescission specified in clause (ii) must be filed no later than 45 days after the date of foreign filing." Instead, clause (iii) merely specified that an "applicant who has made a request under clause (i)...shall notify the Director of such filing no later than 45 days after the date of such filing" and does not itself require such an applicant to rescind the nonpublication request. Implicit in providing notice of foreign filing is a rescission of the nonpublication request, but not *vice versa*. Thus the statute clearly identifies rescission of a nonpublication request and notification of a foreign filing as two separate acts, and a rescission in and of itself cannot be construed as notice of foreign filing.

As to the arguments that no specific notice is required and that filing an international application in the United States Receiving Office was a notification of foreign filing, these arguments are also not persuasive. 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 filing a copy of the international application in the above-identified application would not have been notice of foreign filing.

On August 15, 2002, a Patent Cooperation Treaty application, Application No. PCT/US02/25801, was filed. A review of the contents of the file of the above-identified application shows that no notification of the filing of the PCT application was filed within 45 days after the filing date of the PCT application. As a result of petitioner's failure to provide timely notice of the filing of the PCT application, pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), the above-identified application became abandoned midnight Monday September 30, 2002 (September 29, 2002 being a Sunday).

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

(1) 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.

See 37 CFR 1.137(b) and (f).

The statement in the petition that "Applicant did not at any time intend to abandon the subject application" will be construed as meaning that "the entire delay in filing the required reply [the notification of the filing of the PCT application] 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 rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $1,280 petition fee will be charged to Deposit Account No. 18-2220.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

This application is being forwarded to Technology Center Art Unit 2661 to await further examination in due course.

Mark O. Polutta for KF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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8000 WEST SUNRISE BLVD
FT LAUDERDALE FL 33322

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OFFICE OF PETITIONS

In re Application of
Garahi et al.
Application No. 09/929,030
Filed: August 15, 2001
Attorney Docket No. MESH017

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed July 17, 2006, to withdraw the holding of abandonment for the above-identified application.

This application was held abandoned for failure to respond timely to the Notice of Allowance and Fee(s) Due, mailed on March 15, 2006, which set a three-month statutory period for reply. In the apparent absence of a timely filed response, the application was held abandoned on June 16, 2006.

In the petition, the practitioner asserted the he did not receive the Notice of Allowance and Fee(s) Due because the USPTO erroneously mailed the Notice to a previous correspondence address. The practitioner stated that a Power of Attorney and Correspondence Address Indication Form was filed with the USPTO on January 27, 2006. Accordingly, the practitioner requested that the Office withdraw the holding of abandonment, re-mail the Notice of Allowance to the new correspondence address, and restart the period for reply.

A review of the record indicates that petitioner filed a Power of Attorney and Correspondence Address Indication Form with the USPTO on January 27, 2006, which was subsequently entered into the record. Unfortunately, the USPTO inexplicably mailed the Notice of Allowance and Fee(s) Due and the Notice of Allowability to the previous correspondence address.

In view of the above, the petition under 37 CFR 1.181 is **GRANTED**. No petition fee is required.

Technology Center Art Unit 2616 has been advised of this decision. The matter is being referred to the Technology Center's technical support staff for mailing of a new Notice of Allowance and Notice of

Allowability. The three (3) month shortened statutory time period for responding to the Notice will be set to run from the mailing date of the new Notice.

Telephone inquiries related to this decision 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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 2023
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Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street
Washington DC 20036

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FEB 05 2003

OFFICE OF PETITIONS

In re Application of	:DECISION GRANTING PETITION
Roberts et al.	:UNDER 37 CFR 1.137(b)
Application No. 09/929,031	:
Filed: August 15, 2001	:
Attorney Docket No. 41744	:

This is in response to the "Petition under 37 CFR 1.181 to Consider .... Abandonment," filed November 12, 2002, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application .

The petition to revive the instant nonprovisional application under 37 CFR 1.137(b) is **GRANTED**.

The petition includes a copy of the "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (11-00), signed August 15, 2002 (received by the USPTO on August 15, 2002), and a "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (10-01), signed November 12, 2002. Petitioner argues that the first-filed request to rescind should be treated as a notification of foreign filing. Petitioner argues that language added to the USPTO form for a Request to Rescind was already implicit in the previous version of the USPTO form, and that "the filing of a Request to Rescind is a tacit notice to the Director that the subject application is being filed internationally and/or in one or more foreign states." Furthermore, petitioner states that 35 U.S.C. § 122(b)(2)(B)(iii) does not specify a format in which the notice must be given, and that by filing of the rescission notice just prior to the anniversary of the filing date, applicant provided "*de facto* notice that one or more foreign or international filings have occurred or would be occurring." Moreover, petitioner argues that filing an international application in the PCT Receiving Office can also be considered sufficient notice to the Director. Lastly, petitioner quotes from 35 U.S.C. § 122(b), and relies upon the phrase "regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional" to argue that Congress intended applications to only be considered abandoned where the delay is shown to have been intentional. In the alternative, petitioner requests that the petition be treated under 37 CFR 1.137(b).

35 U.S.C. § 122(b)(2)(B) states:

> (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.

37 CFR 1.213 implements the provisions of 35 U.S.C. § 122(b)(2)(B).

Most patent applications filed on or after November 29, 2000 will be published, unless applicant files a request for nonpublication in compliance with 37 CFR 1.213(a). A nonpublication request is required to contain a certification that "the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement that requires publication at eighteen months after filing." Applicants who do not plan to file in another country are not required to file such a certification, and given that provisional rights (see 35 U.S.C. § 154(d)) may be available to those who have their patent applications publish, some applicants who do not plan to file in another country may elect to have their application published to be eligible for provisional rights. As a result, the filing of a rescission of a nonpublication request does not imply that the invention has been or will be filed in another country, and instead suggests that applicant now desires to have the application published in the United States.

Furthermore, 35 U.S.C. § 122(b)(2)(B)(ii) addresses rescission. If all rescissions provided notice of foreign filing, then 35 U.S.C. § 122(b)(2)(B)(iii), which requires applicants to provide notice of foreign filing within a set time period, would have provided that the "rescission specified in clause (ii) must be filed no later than 45 days after the date of foreign filing." Instead, clause (iii) merely specified that an "applicant who has made a request under clause (i)...shall notify the Director of such filing no later than 45 days after the date of such filing" and does not itself require such an applicant to rescind the nonpublication request. Implicit in providing notice of foreign filing is a rescission of the nonpublication request, but not *vice versa*. Thus the statute clearly identifies rescission of a nonpublication request and notification of a foreign filing as two separate acts, and a rescission in and of itself cannot be construed as notice of foreign filing.

As to the arguments that no specific notice is required and that filing an international application in the United States Receiving Office was a notification of foreign filing, these arguments are also not persuasive. 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 filing a copy of the international application in the above-identified

application would not have been notice of foreign filing.

On August 14, 2002, a Patent Cooperation Treaty application, Application No. PCT/US02/25698, was filed. A review of the contents of the file of the above-identified application shows that no notification of the filing of the PCT application was filed within 45 days after the filing date of the PCT application. As a result of petitioner's failure to provide timely notice of the filing of the PCT application, pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), the above-identified application became abandoned midnight Monday September 30, 2002 (September 28, 2002 being a Saturday).

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

(1) 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.

See 37 CFR 1.137(b) and (f).

The statement in the petition that "Applicant did not at any time intend to abandon the subject application" will be construed as meaning that "the entire delay in filing the required reply [the notification of the filing of the PCT application] 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 rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $1,280 petition fee will be charged to Deposit Account No. 18-2220.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

This application is being forwarded to Technology Center Art Unit 2661 to await further examination in due course.

Mark O. Polutta for KF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt

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OFFICE OF PETITIONS

Roylance, Abrams, Berdo & Goodman, L.L.P.
Suite 600
1300 19th Street
Washington DC 20036

In re Application of	:DECISION GRANTING PETITION
Barker et al.	:UNDER 37 CFR 1.137(b)
Application No. 09/929,032	:
Filed: August 15, 2001	:
Attorney Docket No. 41743	:

This is in response to the "Petition under 37 CFR 1.181 to Consider .... Abandonment," filed November 12, 2002, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application .

The petition to revive the instant nonprovisional application under 37 CFR 1.137(b) is **GRANTED**.

The petition includes a copy of the "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (11-00), signed August 15, 2002 (received by the USPTO on August 15, 2002), and a "Request to Rescind Previous Nonpublication Request," PTO/SB/36 (10-01), signed November 12, 2002. Petitioner argues that the first-filed request to rescind should be treated as a notification of foreign filing. Petitioner argues that language added to the USPTO form for a Request to Rescind was already implicit in the previous version of the USPTO form, and that "the filing of a Request to Rescind is a tacit notice to the Director that the subject application is being filed internationally and/or in one or more foreign states." Furthermore, petitioner states that 35 U.S.C. § 122(b)(2)(B)(iii) does not specify a format in which the notice must be given, and that by filing of the rescission notice just prior to the anniversary of the filing date, applicant provided "*de facto* notice that one or more foreign or international filings have occurred or would be occurring." Moreover, petitioner argues that filing an international application in the PCT Receiving Office can also be considered sufficient notice to the Director. Lastly, petitioner quotes from 35 U.S.C. § 122(b), and relies upon the phrase "regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional" to argue that Congress intended applications to only be considered abandoned where the delay is shown to have been intentional. In the alternative, petitioner requests that the petition be treated under 37 CFR 1.137(b).

35 U.S.C. § 122(b)(2)(B) states:

> (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.

37 CFR 1.213 implements the provisions of 35 U.S.C. § 122(b)(2)(B).

Most patent applications filed on or after November 29, 2000 will be published, unless applicant files a request for nonpublication in compliance with 37 CFR 1.213(a). A nonpublication request is required to contain a certification that "the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement that requires publication at eighteen months after filing." Applicants who do not plan to file in another country are not required to file such a certification, and given that provisional rights (see 35 U.S.C. § 154(d)) may be available to those who have their patent applications publish, some applicants who do not plan to file in another country may elect to have their application published to be eligible for provisional rights. As a result, the filing of a rescission of a nonpublication request does not imply that the invention has been or will be filed in another country, and instead suggests that applicant now desires to have the application published in the United States.

Furthermore, 35 U.S.C. § 122(b)(2)(B)(ii) addresses rescission. If all rescissions provided notice of foreign filing, then 35 U.S.C. § 122(b)(2)(B)(iii), which requires applicants to provide notice of foreign filing within a set time period, would have provided that the "rescission specified in clause (ii) must be filed no later than 45 days after the date of foreign filing." Instead, clause (iii) merely specified that an "applicant who has made a request under clause (i)...shall notify the Director of such filing no later than 45 days after the date of such filing" and does not itself require such an applicant to rescind the nonpublication request. Implicit in providing notice of foreign filing is a rescission of the nonpublication request, but not *vice versa*. Thus the statute clearly identifies rescission of a nonpublication request and notification of a foreign filing as two separate acts, and a rescission in and of itself cannot be construed as notice of foreign filing.

As to the arguments that no specific notice is required and that filing an international application in the United States Receiving Office was a notification of foreign filing, these arguments are also not persuasive. 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 filing a copy of the international application in the above-identified application would not have been notice of foreign filing.

On August 14, 2002, a Patent Cooperation Treaty application, Application No. PCT/US02/25699, was filed. A review of the contents of the file of the above-identified application shows that no notification of the filing of the PCT application was filed within 45 days after the filing date of the PCT application. As a result of petitioner's failure to provide timely notice of the filing of the PCT application, pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), the above-identified application became abandoned midnight Monday, September 30, 2002 (September 28, 2002 being a Saturday).

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

(1) 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.

See 37 CFR 1.137(b) and (f).

The statement in the petition that "Applicant did not at any time intend to abandon the subject application" will be construed as meaning that "the entire delay in filing the required reply [the notification of the filing of the PCT application] 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 rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(a)(7). Accordingly, as authorized, the required $1,280 petition fee will be charged to Deposit Account No. 18-2220.

Any inquiries concerning this decision may be directed to Mark Polutta at (703) 308-8122.

This application is being forwarded to Technology Center Art Unit 2661 to await further examination in due course.

Mark Polutta for KF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Corrected Filing Receipt

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WWW.USPTO.GOV

Paper No. None

LAURA C. HARGITT
General Motors Corporation
Legal Staff, Mail Code 482-C23-B21
P.O. Box 300
Detroit MI 48265-3000

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OCT 0 7 2005

OFFICE OF PETITIONS

In re Application of	:	
Baden Michael Powell	:	
Application No. 09/929,111	:	DECISION GRANTING
Filed: August 15, 2001	:	PETITION UNDER 37 C.F.R. §1.137(b)
Attorney Docket No. GP-301052	:	
Title: LOAD ACQUISITION FOR	:	
MACHINE CLAMP REGISTRIES	:	

This is a decision on the petition filed September 20, 2005, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

It is noted in passing that the inventor listed on the petition does not appear to be associated with the present petition.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed April 9, 2003, which set a shortened statutory period for reply of three (3) months. On June 9, 2003, an amendment was received, and an advisory action was mailed on March 29, 2004. No further responses were received, and no extensions of time were requested. Accordingly, the above-identified application became abandoned on July 10, 2003. A Notice of Abandonment was mailed June 2, 2004.

---

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 present petition, petitioner has filed the petition fee, a Request for Continued Examination (RCE) under 37 C.F.R. §1.114 as well as the associated fee and the proper statement of unintentional delay. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). The amendment submitted on June 9, 2003 shall serve as the required submission.

As such, the petition is **GRANTED**.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 4

HENRY M. FEIEREISEN
350 FIFTH AVENUE, SUITE 3220
NEW YORK, N.Y. 10118

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OFFICE OF PETITIONS

In re Application of
Heinz Etter et al.
Application No. 09/929,186
Filed: August 14, 2001
Attorney Docket No. ETTER

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 3700.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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www.uspto.gov

MEDLEN & CARROLL LLP
101 HOWARD ST
SUITE 350
SAN FRANCISCO CA 94105

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OFFICE OF PETITIONS

In re Application of	:	
Saindon, et al.	:	
Application No. 09/929,204	:	DECISION ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. SPECHE-06445	:	

This is a decision on the petition to revive under 37 CFR 1.137(b), filed August 16, 2005.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed June 14, 2004. Applicants filed an amendment on December 20, 2004, made timely by including a Certificate of Mailing dated December 14, 2004 and by obtaining a three month extension of time. However, the examiner determined that the amendment did not *prima facie* place the application in condition for allowance. Accordingly, an Advisory Action was mailed on February 10, 2005, informing applicants that the amendment would not be entered. The above-identified application became abandoned on December 15, 2004. A Notice of Abandonment was mailed on June 2, 2005.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and filed a proper reply in the form of a Request for Continued Examination (RCE), including the required submission in the form of an amendment.

The application file is being forwarded to Group Art Unit 2654 for consideration of the RCE, filed August 16, 2005.

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

Cliff Congo
Petitions Attorney
Office of Petitions

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JUL 09 2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of

Date: July 9, 2010

STEPHEN F. GASS, J. DAVID FULMER
and JOEL F. JENSEN

Patent No.: 7,284,467 B2

Issued: October 23, 2007

For: APPARATUS AND METHOD FOR DETECTING DANGEROUS CONDITIONS IN POWER EQUIPMENT

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PETITION UNDER 37 CFR 1.181 AND/OR 1.182

Patentee hereby petitions the Director under 37 CFR 1.181(a)(2) and (3) and/or 37 CFR 1.182 to intercede concerning a Certificate of Correction. Patentee believes a petition to the Director is necessary because the Patent Office has not responded to a "Request for Reconsideration Concerning a Denial of a Request for Correction" or to a "Request for a Second Certificate of Correction." The $400 fee required by 37 CFR 1.17(f) for petitions under 37 CFR 1.182 is submitted herewith.

U.S. Patent 7,284,467 describes a woodworking machine with a system to detect contact between a person and a cutting tool. The patent issued on October 23, 2007 with mistakes. Accordingly, on September 19, 2008, patentee requested a first Certificate of Correction listing three corrections. One of the corrections was to replace a semicolon with a period at column 16, line 24. Another correction was to correct a typographical error by deleting "beanngs" and inserting --bearings-- at column 16, line

PAGE 3/7 * RCVD AT 7/9/2010 4:55:33 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/20 * DNIS:2738300 * CSID:5035703303 * DURATION (mm-ss):01-46

36. Both of those corrections were approved and a Certificate of Correction issued on December 2, 2008.

The third requested correction, however, was denied. The third correction sought to delete a clause from claim 2 in the patent at column 16, lines 25-31. Part of that clause was deleted in a Fifth Amendment filed July 18, 2006, but the Certificate of Correction mistakenly requested deletion of the entire clause. The Patent Office denied the correction in a letter dated November 6, 2008, saying "the alleged error, in column 16, lines 25-31, is printed in accordance with the record." However, the record clearly shows that part of the clause should have been deleted, so the undersigned requested reconsideration on March 10, 2009 and identified the part of the clause that should have been deleted. The undersigned also called the Patent Office on June 4, 2009 and left a voice mail asking if the Patent Office had received the request for reconsideration. To date, no response to the request for reconsideration has been received.

Because the undersigned did not receive a response to the request for reconsideration, patentee submitted a second Certificate of Correction on October 2, 2009, a copy of which is attached. The second Certificate of Correction sought to delete the clause from claim 2 that was deleted by the Fifth Amendment. That clause is at column 16, lines 29-30 in the patent and it recites: ", and a dielectric in the gap between the shaft and second conductive plate". The reason that clause was deleted by the Fifth Amendment was to address an objection made by the Examiner in an earlier Office Action mailed April 18, 2006. In the earlier Office Action the Examiner objected to the drawings for allegedly failing to show a dielectric and the Examiner required either new drawings or amending the claim. Applicant chose to amend the claim, and the Examiner

PAGE 4/7 * RCVD AT 7/9/2010 4:55:33 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/20 * DNIS:2738300 * CSID:5035703303 * DURATION (mm-ss):01-46

accepted that amendment by approving the drawings in the next Office Action mailed October 23, 2006.

Unfortunately, the Office Action mailed October 23, 2006 says it is responsive to an Appeal Brief filed February 6, 2006, not to the Fifth Amendment filed July 18, 2006. That reference to the Appeal Brief, however, was a mistake. The Office Action mailed October 23, 2006 was clearly responsive to the Fifth Amendment because page 3 of the October 23rd Office Action says: "Applicant's arguments that Terauchi does not teach a capacitive coupling between guide G and the drive shaft 121 is not persuasive." Applicant's arguments concerning Terauchi were made in the Fifth Amendment, not in the Appeal Brief. In fact, the Appeal Brief does not discuss Terauchi at all. The fact that the October 23rd Office Action was responsive to the Fifth Amendment and not to the Appeal Brief is also evident from the fact that all other amendments made by the Fifth Amendment were entered. The fact that the drawings were accepted by the Examiner in the October 23rd Office Action also shows that the Office Action was responsive to the Fifth Amendment.

Thus, despite the statement that the October 23rd Office Action was responsive to the Appeal Brief filed February 6, 2006, the prosecution history shows that the Office Action was responsive to the Fifth Amendment and that the Examiner entered the Fifth Amendment. Accordingly, the issued patent should be corrected as set forth in the second request for a Certificate of Correction.

The second request for a Certificate of Correction also sought to undo one of the two corrections made by the Certificate of Correction dated December 2, 2008. Specifically, the period that replaced the semicolon at column 16, line 24 should not

PAGE 5/7 * RCVD AT 7/9/2010 4:55:33 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/20 * DNIS:2738300 * CSID:5035703303 * DURATION (mm-ss):01-46

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have been inserted; the semicolon was correct, as is evident from the Fifth Amendment filed July 18, 2006 and from reading the claim. The second Certificate of Correction replaced the mistakenly inserted period with the original semicolon.

In summary, the patent at issue should be corrected, as shown by the prosecution history discussed above, but patentee has not received a response to the second Certificate of Correction or to the request for reconsideration of the first Certificate of Correction. In this situation patentee believes a petition to the Director is warranted and necessary. Accordingly, patentee asks the Director to issue the attached second Certificate of Correction.

Please contact the undersigned with any questions.

Respectfully submitted,

SD3, LLC

David A. Fanning, Esq.
Registration No. 33,233
Customer No. 27630
9564 S.W. Tualatin Road
Tualatin, Oregon 97062
Telephone: (503) 570-3200
Facsimile: (503) 570-3303

CERTIFICATE OF TRANSMISSION/MAILING

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David A. Fanning

PAGE 6/7 * RCVD AT 7/9/2010 4:55:33 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-5/20 * DNIS:2738300 * CSID:5035703303 * DURATION (mm-ss):01-46

PTO/SB/44 (09-07)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,284,467 B2

APPLICATION NO.: 09/929221

ISSUE DATE : October 23, 2007

INVENTOR(S) : Stephen F. Gass, J. David Fulmer and Joel F. Jensen

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

Column 16, line 24, delete "." inserted by the Certificate of Correction dated December 2, 2008 and Insert --;--.

Column 16, lines 29-30, delete ", and a dielectric in the gap between the shaft and second conductive plate".

MAILING ADDRESS OF SENDER (Please do not use customer number below):

SD3, LLC
9564 S.W. Tualatin Road
Tualatin, OR 97062

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.

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OFFICE OF PETITIONS

SD3, LLC
25977 S.W. Canyon Creek Road, Suite G
WILSONVILLE, OR 97070

In re Application of	:
Gass, et al.	: DECISION ON APPLICATION
Application No. 09/929,234	: FOR PATENT TERM ADJUSTMENT
Filed: August 13, 2001	:
Atty. Dkt. No.: SDT 310	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.704(B)" filed February 2, 2006. This matter is being properly treated under 37 CFR 1.705(b) as an application patent term adjustment.

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

The correct patent term adjustment (PTA) at the time of the allowance is 145 days. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the Notice of Allowance reflects an adjustment of 145 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

Applicants request that the Determination of Patent Term Adjustment be corrected from zero days, as indicated on the Determination of Patent Term Adjustment mailed November 3, 2005, to an adjustment of 287 days.

Applicants further argue that the Notice of Non-Compliant Amendment mailed January 12, 2005 was mailed in error on the grounds that the response submitted August 2, 2004 to the non-final Office action mailed May 3, 2004 was compliant. Applicants argue that amended claim one, submitted August 2, 2004, did not contain included multiple periods, as indicated in the Notice of Non-Complaint Amendment. Applicants further suggest that perhaps the amendment submitted August 2, 2004 via facsimile was not clear as a result of the facsimile transmission.

Thus, applicants argue that the reduction of 196 days in connection with the response to the Notice of Non-Compliant Amendment is in error and, further, that the application is entitled to an additional adjustment of 175 days for the Office's failure to issue

an Office action within four months of the date the response to the non-final Office action was received on August 2, 2004.

Applicants' arguments have been carefully considered and found convincing. A comparison of the amended claims submitted August 2, 2004 and February 14, 2005 would seem to indicate that, as argued by applicants, the deterioration of the text can likely be attributed to the mode of transmission, i.e., facsimile.

Accordingly, the reduction of 196 days has been corrected and an adjustment of 175 days entered.

Nonetheless, a further reduction of 139 days in accordance with 37 CFR 1.704(c)(8) can be attributed to applicants in connection with the Information Disclosure Statement (IDS) submitted December 19, 2004. The reduction began August 3, 2004, the day after the day that a reply to the non-final Office action was received, and ended December 19, 2004, the date that the IDS was submitted.

Furthermore, at the time of allowance, a reduction of 49 days in accordance with 37 CFR 1.704(c)(8) was entered in connection with the IDS submitted October 5, 2005. A review of the record reveals that an additional IDS was submitted October 8, 2005. Accordingly, the proper reduction is 52 days, rather than 49 days, in accordance with 37 CFR 1.704(c)(8) has been entered. The reduction began August 18, 2005, the day after the date that a reply to the non-final Office action was received, and ended October 8, 2005, the date that the IDS was submitted.

In summary, at the time of allowance, the application is entitled to an adjustment of 145 days[1].

Receipt is hereby acknowledged of the required Patent Term Adjustment application fee of $200.00.

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

---

[1] The adjustments for Office delay are as follows: 275 days in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(2) in connection with the restriction requirement mailed July 15, 2003; 175 days in accordance with 37 CFR 1.702(a)(2) and 1.703(a)(2) in connection with the non-final Office mailed May 26, 2005. The reductions for applicants' failure to engage in reasonable efforts to conclude prosecution in accordance with 37 CFR 1.704(c)(8) are as follows: 30 days in connection with the IDS submitted August 22, 2003; 84 days in connection with the IDS submitted April 29, 2004; 139 days in connection with the IDS submitted December 19, 2004; and 52 days in connection with the IDS submitted October 8, 2005.

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 Patent Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Adjustment PAIR Calculation

PALM INTRANET

Day : Tuesday
Date: 5/1/2007
Time: 10:13:40

PTA Calculations for Application: 09/929234

Application Filing Date:	08/13/2001	PTO Delay (PTO):	275
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	359
Post-Issue Petitions:	0	Total PTA (days):	145
PTO Delay Adjustment:	229		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
74	05/01/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		3	
73	05/01/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		139	
72	05/01/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	175		
71	05/01/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	196		
58	11/03/2005	MAIL NOTICE OF ALLOWANCE			
57	11/01/2005	ISSUE REVISION COMPLETED			
56	11/01/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	11/01/2005	CASE DOCKETED TO EXAMINER IN GAU			
54	10/31/2005	NOTICE OF ALLOWABILITY			
52	10/08/2005	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
51	10/05/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		49	48
50	10/09/2005	CASE DOCKETED TO EXAMINER IN GAU			
49	08/23/2005	DATE FORWARDED TO EXAMINER			
48	08/17/2005	RESPONSE AFTER NON-FINAL ACTION			
47	07/24/2005	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
46	06/04/2005	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
45	05/26/2005	MAIL NON-FINAL REJECTION			
44	09/06/2004	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
43	05/11/2005	NON-FINAL REJECTION			
42	12/19/2004	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
41	02/27/2005	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			

40	03/01/2005	DATE FORWARDED TO EXAMINER			
39	02/14/2005	RESPONSE AFTER NON-FINAL ACTION		196	32
35	12/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
34	01/12/2005	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
33	11/02/2004	DATE FORWARDED TO EXAMINER			
32.1	08/02/2004	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
32	08/02/2004	RESPONSE AFTER NON-FINAL ACTION			
31	08/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	08/02/2004	WORKFLOW INCOMING AMENDMENT IFW			
29	04/29/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		84	20
28	04/17/2004	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
27	05/03/2004	MAIL NON-FINAL REJECTION			
26	04/26/2004	NON-FINAL REJECTION			
25	03/10/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
24	03/25/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
23	02/09/2004	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
22	02/08/2004	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
21	02/17/2004	DATE FORWARDED TO EXAMINER			
20	02/05/2004	RESPONSE AFTER NON-FINAL ACTION			
19	11/16/2003	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
18	11/06/2003	MAIL NON-FINAL REJECTION			
17	11/03/2003	NON-FINAL REJECTION			
16	08/22/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		30	13
15	08/10/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
14	07/25/2003	DATE FORWARDED TO EXAMINER			
13	07/23/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
12	07/15/2003	MAIL RESTRICTION REQUIREMENT	275		-1
11	07/14/2003	REQUIREMENT FOR RESTRICTION / ELECTION			

10	04/27/2003	CASE DOCKETED TO EXAMINER IN GAU			
9	01/12/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	09/16/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	05/01/2002	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
6	12/18/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	01/26/2002	CASE DOCKETED TO EXAMINER IN GAU			
4	09/17/2001	APPLICATION DISPATCHED FROM OIPE			
3	09/14/2001	CORRESPONDENCE ADDRESS CHANGE			
2	08/21/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	08/13/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Gass et al. :
Application No. 09/929,236 :
Filed: August 13, 2001 :
Attorney Docket No. SDT 307 :

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 24, 2005.

The petition to withdraw the holding of abandonment is **Dismissed**.

Any request for reconsideration should be filed within **TWO MONTHS** of the mailing 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.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of December 22, 2003. An amendment was filed on April 15, 2004. In response to the amendment a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on April 29, 2004 which set an extendable reply period of one month. A reply to the Notice of Non-Compliant Amendment was not received. This application became abandoned on May 30, 2004. A Notice of Abandonment was mailed on March 18, 2005.

Petitioner asserts that the Notice of Non-Compliant Amendment mailed April 29, 2004 was never received. Petitioner contends a second amendment received in the Office on July 7, 2004 was not in response to the Notice of Non-Compliant Amendment . The purpose of the second amendment was to defer double patenting rejection in a co-pending application. In support, petitioner has provided a copy of what appears to be the front copy of a file jacket.

There is a strong presumption that the Notice was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice 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 communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.[1] The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Notice may have been lost after receipt rather than a conclusion that the Notice was lost in the mail.

Petitioner has failed to provide a copy of the docket records. Petitioner should submit docket records from April 29, 2004 to May 29, 2004 on renewed petition.

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

By mail:	Mail Stop Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office Customer Service Window, Randolph Building 401 Dulany Street Alexandria, VA 22314

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

[1] M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

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In re Application of Gass et al. Application No. 09/929,236 Filed: August 13, 2001 Attorney Docket No. SDT 307	: : : : :	ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed September 15, 2006.

The petition to withdraw the holding of abandonment is **GRANTED**.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of December 22, 2003. An amendment was filed on April 15, 2004. In response to the amendment a Notice of Non-Compliant Amendment (37 CFR 1.121) was mailed on April 29, 2004 which set an extendable reply period of one month. A reply to the Notice of Non-Compliant Amendment was not received. This application became abandoned on May 30, 2004. A Notice of Abandonment was mailed on March 18, 2005. A petition to withdraw the holding of abandonment was dismissed on July 17, 2006.

Petitioner asserts that the Notice of Non-Compliant Amendment mailed April 29, 2004 was never received. Petitioner contends a second amendment received in the Office on July 7, 2004 was not in response to the Notice of Non-Compliant Amendment . The purpose of the second amendment was to defer double patenting rejection in a co-pending application. In support, petitioner has provided a copy of what appears to be the front copy of a file jacket. In support of petitioner's contention, copy of the docket records has been provided.

The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn

This application is being forwarded to Art Unit 3724 for re-mailing of the Notice of Non-

Compliant Amendment to the correspondence address of record. The time period for reply will be set to run from the mailing date of the new Office Communication.

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

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Tualatin, OR 97062

Mail Date: 04/22/2010

Applicant	: Stephen F. Gass	: DECISION ON REQUEST FOR
Patent Number	: 7610836	: RECALCULATION of PATENT
Issue Date	: 11/03/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/929,236	: OF WYETH
Filed	: 08/13/2001	:
		:

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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OFFICE OF PETITIONS

In re Application of	:	
Mieko KUSANO et al.	:	
Application No. 09/929,257	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. US01 8005	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 29, 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 7, 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 January 8, 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 an amendment; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of October 7, 2004 is accepted as having been unintentionally delayed.

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

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 MPP 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 David A. Bucci at (571) 272-7099 or in his absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center AU 2153 for appropriate action on the concurrently filed amendment.

Brian Hearn
Petitions Examiner
Office of Petitions

CC: THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 01/18/06

TO SPE OF : ART UNIT ~~2882~~ 1637

SUBJECT : Request for Certificate of Correction on Patent No.: 09/929266 6824981

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Angela Green
Certificates of Correction Branch
Tel. No. 703-305-9380 ext. 123

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

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

Comments:

_____

_____

_____

_____

_____

SPE 1637 **Art Unit**

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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

In re Application of Hans-Wulf Pfeiffer Application No. 09/929,267 Filed: August 14, 2001 Attorney Docket No. 03466-P0001B	: DECISION GRANTING PETITION

This is a decision on the petition filed April 7, 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 July 18, 2005. On July 1, 2005, an appeal brief was filed. On August 25, 2005, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed October 27, 2005. On December 13, 2005 a second Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed and in response another Appeal Brief was filed on December 27, 2005. A third Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed on February 15, 2006. No response having been filed, this application became abandoned. Accordingly, subsequent to the filing of the instant petition, a Notice of Abandonment was mailed April 10, 2006.

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 1731 for review of the Appeal Brief filed April 7, 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

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In re Application of
Hans-Wulf Pfeiffer
Application No. 09/929,267
Filed: August 14, 2001
Attorney Docket No. 03466-P0001B

: DECISION GRANTING PETITION

This is a decision on the petition filed March 23, 2007 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 July 18, 2005. On July 1, 2005, an appeal brief was filed. On August 25, 2005, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed October 27, 2005. On December 13, 2005 a second Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed and in response another Appeal Brief was filed on December 27, 2005. A third Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed on February 15, 2006. No response having been filed, this application became abandoned and in response to the abandonment, a petition to revive and Substitute Appeal Brief were filed. The petition was granted on May 22, 2006 however, a Notification of Non-Compliant Appeal Brief was mailed June 7, 2006. The Substitute Appeal Brief filed July 10, 2006, in response thereof, was followed by yet another Notification of Non-Compliant Appeal Brief on September 13, 2006. After the filing of a Substitute Appeal Brief and extension of time on October 6, 2006, A Notification of Non-Compliant Appeal Brief was mailed January 8, 2007. No response having been timely filed, the application became abandoned.

Comes now petitioner with the instant petition to revive and an Substitute Appeal Brief under 37 CFR 41.37.

This application is being forwarded to Technology Center 1731 for review of the Appeal Brief filed March 23, 2007.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

In re Application of
Hans-Wulf Pfeiffer
Application No. 09/929,267
Filed: August 14, 2001
Attorney Docket No. 03466-P0001B

: DECISION ON PETITION

CORRECTED DECISION

This is a decision on the petition filed March 23, 2007 under 37 CFR 1.137(b) [1] to revive the above-identified application. The decision on petition mailed September 17, 2007 is hereby vacated.

The petition under 37 CFR 1.137 (b) 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.

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 July 18, 2005. On July 1, 2005, an appeal brief was filed. On August 25, 2005, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed October 27, 2005. On December 13, 2005 a second Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed and in response another Appeal Brief was filed on December 27, 2005. A third Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed on February 15, 2006. No response having been filed, this application became abandoned and in response to the abandonment, a petition to revive and Substitute Appeal Brief were

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

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

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

filed. The petition was granted on May 22, 2006 however, a Notification of Non-Compliant Appeal Brief was mailed June 7, 2006. The Substitute Appeal Brief filed July 10, 2006, in response thereof, was followed by yet another Notification of Non-Compliant Appeal Brief on September 13, 2006. After the filing of a Substitute Appeal Brief and extension of time on October 6, 2006, A Notification of Non-Compliant Appeal Brief was mailed January 8, 2007. No response having been timely filed, the application became abandoned.

Comes now petitioner with the instant petition to revive and an Substitute Appeal Brief under 37 CFR 41.37.

The Examiner of record has indicated that the Substitute Appeal Brief filed March 23, 2007 is not in compliance with 37 CFR 41.317(c)(1)(ix). Thus, the petition does not satisfy requirement (1) above.

A courtesy copy of the Notification of Non-Compliant Appeal Brief is included signed by the Examiner of record is included. Petitioner must submit a proper Substitute Appeal Brief under 37 CFR 41.37 with any renewed petition. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay**.

Petitioner is advised that the decision mailed September 17, 2007 is vacated and the application remains in an abandoned status.

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

ATTACHMENT: Courtesy Copy of Notification of Non-Compliant Appeal Brief

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/929,267	Applicant(s) PFEIFFER, HANS-WULF	
	Examiner John Hoffmann	Art Unit 1731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 23 March 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

~~To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**~~

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☒ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by **appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☒ Other (including any explanation in support of the above items):

At least the following: Exhibit A copy is lacking.

7-12-2007

John Hoffmann
Primary Examiner
Art Unit: 1731

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD CT 06905-5619

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OFFICE OF PETITIONS

In re Application of
Hans-Wulf Pfeiffer
Application No. 09/929,267
Filed: August 14, 2001
Attorney Docket No. 03466-P0001B

: DECISION GRANTING PETITION

This is a decision on the renewed petition filed October 15, 2007, 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 July 18, 2005. On July 1, 2005, an appeal brief was filed. On August 25, 2005, a Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed. In response, a Supplemental Appeal Brief was filed October 27, 2005. On December 13, 2005 a second Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed and in response another Appeal Brief was filed on December 27, 2005. A third Notification of Non-Compliance with 37 CFR 1.192 (c) was mailed on February 15, 2006. No response having been filed, this application became abandoned and in response to the abandonment, a petition to revive and Substitute Appeal Brief were filed. The petition was granted on May 22, 2006 however, a Notification of Non-Compliant Appeal Brief was mailed June 7, 2006. The Substitute Appeal Brief filed July 10, 2006, in response thereof, was followed by yet another Notification of Non-Compliant Appeal Brief on September 13, 2006. After the filing of a Substitute Appeal Brief and extension of time on October 6, 2006, A Notification of Non-Compliant Appeal Brief was mailed January 8, 2007. No response having been timely filed, the application became abandoned.

A petition to revive filed March 23, 2007 was dismissed in a corrected decision mailed September 20, 2007 because the Examiner of record indicated that the Substitute Appeal Brief filed March 23, 2007 was not in compliance with 37 CFR 41.317(c)(1)(ix).

Comes now petitioner with the instant renewed petition to revive and a Substitute Appeal Brief under 37 CFR 41.37. The Examiner of record has indicated that the Appeal Brief submitted October 15, 2007 with the instant renewed petition is acceptable.

This application is being forwarded to Technology Center 1731 for review of the Appeal Brief filed October 15, 2007.

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 PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

Paper No. 6

WILLIAM SCHMONSEES
TOWNSEND AND TOWNSEND AND CREW LLP
TWO EMBARCADERO CENTER, 8TH FLOOR
SAN FRANCISCO, CA 94111-3834

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OCT 2 3 2002

OFFICE OF PETITIONS

In re Application of
M. Allen Northrup
Application No. 09/929,270
Filed: August 13, 2001
Attorney Docket No. 020048-002820US

NOTICE

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

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

This file is being forwarded to Technology Center 1600.

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

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

STEPHEN E. FELDMAN, P.C.
12 EAST 41ST STREET
NEW YORK NY 10017

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NOV 17 2004

OFFICE OF PETITIONS

In re Application of
Ricky K.C. Yeung
Application No. 09/929,271
Filed: August 15, 2001
Attorney Docket No. 24753

ON PETITION

This is a decision on the petition, filed October 12, 2004 under 37 CFR 1.137(a), 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.

This application became abandoned for failure to timely reply to the final Office Action mailed March 15, 2004. An amendment filed May 27, 2004 was considered and the applicant was advised in an advisory action mailed June 9, 2004 that the amendment did not place the application in condition for allowance. A second amendment was filed September 14, 2004 which again did not place the application in condition for allowance and thus another advisory action was mailed September 29, 2004. This petition precedes the mailing of a Notice of Abandonment.

PETITION UNDER 37 CFR 1.137(a)[1]

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[1]A grantable petition under 37 CFR 1.137(a) must be accompanied by:

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

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

The petition does not satisfy requirement (1) and (3) above.

The application became abandoned for failure to file a response within the meaning of 37 CFR 1.113 to the final rejection of March 15, 2004, within the time period for response. 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. Since the amendment submitted with the petition has been referred to the examiner, who has indicated that the amendment still does not prima facie place the application in condition for allowance, the response required for a renewed petition must be a Notice of Appeal and requisite fee, or the filing of a continuing application under the terms set forth in 1031 O.G. 11.

The Commissioner may revive an abandoned application if the delay in responding to the relevant outstanding Office requirement is shown to the satisfaction of the Commissioner to be "unavoidable".[2] 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.[3]

The showing of record is inadequate to establish unavoidable delay within the meaning

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(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)).

[2] 35 U.S.C. § 133.

[3] In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." Smith v. Mossinghoff, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines v. Quigg, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

of 35 U.S.C. § 133 and 37 CFR 1.137(a).[4] Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, facsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.[5]

Petitioner has submitted no evidence, that the delay in providing a proper response to the Final Office Action mailed March 15, 2004 was unavoidable, save petitioner's bald assertion. As the showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a), the petition will be dismissed.

Petitioner must submit a proper reply to the Final Office action mailed on March 15, 2004, with any renewed petition and proof that the delay in responding timely with a proper response to the Final Office Action was unavoidable. **Petitioner should note that submission of any renewed petition without the required reply will be construed as intentional delay.**

ALTERNATIVE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b),[6] which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b).

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[4]See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

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

[6]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)).

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

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

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

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

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STEPHEN E. FELDMAN, P.C.
12 EAST 41ST STREET
NEW YORK NY 10017

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OFFICE OF PETITIONS

In re Application of
Ricky K.C. Yeung
Application No. 09/929,271
Filed: August 15, 2001
Attorney Docket No. 24753

ON PETITION

This is a decision on the petition, filed January 24, 2005 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed March 15, 2004. An amendment filed May 27, 2004 was considered and the applicant was advised in an advisory action mailed June 9, 2004 that the amendment did not place the application in condition for allowance. A second amendment was filed September 14, 2004 which again did not place the application in condition for allowance and thus another advisory action was mailed September 29, 2004. A petition under 37 CFR 1.137(a) was filed October 12, 2004 and dismissed in a decision mailed November 17, 2004 because the response filed did not place the application in condition for allowance and because no evidence of unavoidable delay was submitted. This decision again precedes the mailing of the Notice of Abandonment.

Comes now petitioner with this petition under the unintentional standard.

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.

A Request for Continued Examination (RCE) and an amendment are submitted with the petition in response to the Final Office action and in compliance with 37 CFR 1.114. The RCE fee has been applied. The petition fee however, for a petition under 37 CFR 1.137(a) is set at $750.00. The check in the amount of $250.00 has been applied and petitioner's deposit account (Account No. 06-0515) has been charged in the amount of $500.00.

This matter is being forwarded to Technology Center 1761 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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P. O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 16

PARSONS HSUE & DE RUNTZ
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

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AUG 07 2003
OFFICE OF PETITIONS

In re Application of
Richard N. Zare et al
Application No. 09/929,275
Filed: August 13, 2001
Attorney Docket No. STNB.066US0

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b

This is a decision on the petition, filed July 11, 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 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 is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in a foreign country on August 13, 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(b) to revive for failure to timely notify the Office of the filing of an application in a foreign country 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 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 previously rescinded.

Any inquiries concerning this decision may be directed to Wan Laymon at (703) 306-5685.

This application is being forwarded to Technology Center Art Unit 1723 to await a reply to the nonfinal Office action of June 4, 2003, or, if filed, to associate the reply with the file. Failure to timely reply to the June 4, 2003 Office action will again result in the abandonment of the application.

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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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www.uspto.gov

Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO, CA 94303

Mail Date: 05/03/2010

Applicant	: Sukendeep Samra	: DECISION ON REQUEST FOR
Patent Number	: 6897880	: RECALCULATION of PATENT
Issue Date	: 05/24/2005	: TERM ADJUSTMENT IN VIEW
Application No	: 09/929,276	: OF WYETH
Filed	: 08/13/2001	:
		:

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.

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. 13

Mr. A.J. Kelly
Kelly Law Firm, PLC
PO Box 251570
Little Rock AR 72225-1570

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DEC 1 9 2003

OFFICE OF PETITIONS

In re Application of

Vought, et al.

Application No. 09/929,291

Filed: August 13, 2001

Attorney Docket No.

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 4, 2003, 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 April 12, 2002, which set a shortened statutory period for reply of three (3) months. Extension of time within the third month was obtained, but no response to the non-final Office action was received within the allowable period. Accordingly, the application became abandoned on October 13, 2002. A Notice of Abandonment was mailed on December 5. 2002.

The amendment filed December 4, 2003, is noted and made of record.

The application is being forwarded to Technology Center 3600 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

MAIL

AUG 1 2 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MARK M. TAKAHASHI
GRAY CARY WARE & FREIDENRICH, LLP
4365 EXECUTIVE DRIVE, SUITE 1100
SAN DIEGO CA 92121-2133

In re Application of :
Ho et al. :
Application No. 09/929,295 :
Filed: August 13, 2001 :
For: **METHOD FOR GENERATING AN ANIMATED THREE-DIMENSIONAL VIDEO HEAD** :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on June 30, 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 met all of the above.

Accordingly, the request is **GRANTED**.

All attorneys associated with Customer No. 25,548 are granted the request for withdraw of attorney/agent.

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: NARAYAN IYER
40134 LAIOLO ROAD
FREMONT, CA 94538

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 30, 2006

TO SPE OF : ART UNIT 3753

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/929308 Patent No.: 6,386,225 B1

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: _____

Lee Keasel
SPE

3753
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

BERKELEY LAW & TECHNOLOGY GROUP
1700 NW 167TH PLACE
SUITE 240
BEAVERTON, OR 97006

MAILED

OCT 13 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Yu-Sam Chang, et al.
Application Serial No.: 09/929,331
Filed: August 14, 2001
For: **DOCUMENT-LOADING PANEL STRUCTURE FOR SCANNER**

DECISION
ON PETITION

This is a decision on the Petition to Withdraw Holding of Abandonment under 37 CFR § 1.181 filed August 24, 2005.

The petition is **GRANTED**.

This application was held abandoned for failure to timely file a proper response to the non-final Office action mailed February 25, 2005. A Notice of Abandonment was mailed on June 21, 2005.

A review of the record indicates that the Notice of abandonment was mailed shortly after the shortened statutory period expired and well before the end of the extendable six month statutory period for reply. Applicant was given no opportunity to petition for extension of time as appropriate.

Accordingly, the Notice of Abandonment is hereby vacated and the application is restored to pending status.

A review of the file finds that a response including a petition for a three month extension of time were received on August 29, 2005 (including an August 25, 2005 certificate of mailing). Therefore, the application is being 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

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BERKELEY LAW & TECHNOLOGY GROUP, LLP
1700 NW 167TH PLACE
SUITE 240
BEAVERTON, OR 97006

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OFFICE OF PETITIONS

In re Application of	:	
Yu-Sam Chang, et al.	:	
Application No. 09/929,331	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. 112.P14038	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 4, 2006, 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 February 10, 2006. A notice of Abandonment was mailed on October 3, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(III)(A)(2). On December 4, 2006, the present petition was filed.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of $790 and the submission required by 37 CFR 1.114; (2) the petition fee of $1,500; and (3) a proper statement of unintentional delay.

The application is being referred to Technology Center AU 2625 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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MAIL

APR 2 7 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

In re Application of)
Althouse et al.)
Application No. 09/929,339)
Filed: August 15, 2001)
For: **OPTICAL CHANNEL MONITOR UTILIZING MULTIPLE FABRY-PEROT FILTER PASS-BANDS**)

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 December 3, 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.

A Revocation and Power of Attorney was filed November 23, 2004. Accordingly, the request is DISMISSED.

All attorneys/agents of Record are withdrawn.

All future communications from the Office will continue to 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.

Ken Wieder
Special Program Examiner
Technology Center 2600
Communications
(571) 272-2986

CC:

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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Paper No. 9

EDWARD J. LYNCH
COUDERT BROTHERS LLP
600 BEACH STREET, 3RD FLOOR
SAN FRANCISCO CA 94109-1312

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JUL 3 1 2003

OFFICE OF PETITIONS

In re Application of
BURBANK et al.
Application No. 09/929,371
Filed: August 13, 2001
Attorney Docket No. 9619-1001

DECISION ON PETITION

This is a decision on the petition filed February 10, 2003, requesting that the above-identified application be accorded a filing date of August 13, 2001, with pages 22-26 of the specification as part of the original disclosure.

On August 13, 2001, applicants filed the above-identified application. On November 12, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application had been accorded a filing date of August 13, 2001, and advising applicant that pages 22-26 of the specification appeared to have been omitted.

In response, on February 10, 2003, applicants filed the present petition, the petition fee, an associate power of attorney and change of correspondence address, and a copy of applicants' postcard receipt acknowledging receipt of "Original Non-provisional Application (27 pages, including 19 pgs. of description, 7 pgs. claims, and 1 pg. abstract, drawings 11 sheets)" on August 13, 2001. Additionally, applicants submitted pages 22-26 of the specification with the present petition.

In the present petition, applicants request that the application, including pages 22-26 of the specification, be accorded a filing date of August 13, 2001.

Upon review of the record, pages 22-26, deposited on August 13, 2001, have not been located among the application papers. However, the evidence is convincing that the application papers deposited on August 13, 2001, included pages 22-26 of specification, which was subsequently misplaced in the United States Patent and Trademark Office. Therefore, the application, including pages 22-26, was complete on filing and will be granted a filing date of August 13, 2001.

Accordingly, the petition is granted.

The Notice of November 12, 2002, was sent in error and is hereby vacated. Accordingly, the $130.00 petition fee is unnecessary and will be credited to Deposit Account No. 13-0201.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of August 13, 2001, using pages 22-26 submitted with the present petition.

Any inquiries related to 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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Paper No. 15

EDWARD J. LYNCH
DUANE MORRIS
ONE MARKET
SPEAR TOWER STE 2000
SAN FRANCISCO, CA 94105

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MAR 3 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Fred H. Burbank et al	:	
Application No. 09/929,371	:	ON PETITION
Filed: August 13, 2001	:	
Attorney Docket No. 9619-1001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 14, 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 February 18, 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 May 19, 2004.

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

The file is being forwarded to Technology Center 3736.

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
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NAVIGATION TECHNOLOGIES
222 MERCHANDISE MART
SUITE 900, PATENT DEPT.
CHICAGO, IL 60654

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NOV 24 2004

OFFICE OF PETITIONS

In re Application of :
Xiangheng Yang :
Application No. 09/929,397 : ON PETITION
Filed: August 14, 2001 :
Attorney Docket No. N0099US :

This is a decision on the petition under 37 CFR 1.313(c), filed November 18, 2004, which is being treated under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is GRANTED.

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

Petitioner is advised that the issue fee paid on October 27, 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 Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center AU 3661 for processing of the request for continued examination under 37 CFR 1.114.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO, CA 94303

Mail Date: 05/03/2010

Applicant	: Sukendeep Samra	: DECISION ON REQUEST FOR
Patent Number	: 6873344	: RECALCULATION of PATENT
Issue Date	: 03/29/2005	: TERM ADJUSTMENT IN VIEW
Application No	: 09/929,400	: OF WYETH
Filed	: 08/13/2001	:
		:

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 7

AUG -4 2003

In re Application of
Geoffrey Manning
Application No. 09/929,447
Filed: August 14, 2001
Attorney Docket No. 534334-013

: DECISION ON PETITION

This is a decision on the petition filed on July 21, 2003 by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to timely file a proper reply to the Office letter dated October 2, 2002. The petition is being considered under 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that the application is not abandoned because a proper reply to the Office letter in question was in fact timely filed. Petitioner supports this allegation by furnishing a copy of the reply, and a copy of the filing receipt for the reply which shows that the reply was received in the Office on December 31, 2002. As the Office letter in question set a three month period for filing a reply thereto, it is clear that the reply was timely filed, and that 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 examiner for action on the reply filed on December 31, 2002.

PETITION GRANTED.

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

Thompson Hine L.L.P.
2000 Courthouse Plaza, N.E.
10 West Second Street
Dayton, OH 45402

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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BRIAN M. BERLINER, ESQ.
O'MELVENY & MYERS, LLP
400 SOUTH HOPE STREET
LOS ANGELES, CA 90071-2899

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MAY 03 2007

OFFICE OF PETITIONS

In re Application of :
Harley Kent Heinrich et al :
Application No. 09/929,461 : DECISION ON PETITION
Filed: August 14, 2001 :
Attorney Docket No. 411951-222 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 5, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action mailed December 1, 2005, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time was obtained under the provisions of 37 CFR 1.136(a). Accordingly, the application became abandoned on June 2, 2006. A Notice of Abandonment was mailed on October 2, 2006, subsequent to the filing of the present petition to revive.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a Request for Continued Examination (RCE) and fee of $790 (the submission required by 37 CFR 1.114 is the previous reply filed on May 30, 2006), (2) the petition fee of $1,500, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Office action of December 1, 2005 is accepted as being unintentionally delayed.

This application is being referred to Technology Center AU 2612 for processing the RCE filed on September 5, 2006 and for appropriate action on the submission under 37 CFR 1.114.

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#3

SEP - 6 2001

In re Application of	:	
Jeff Kirsner et al	:	
Serial Number: 09/929,465	:	DECISION
Filed: August 14, 2001	:	ON
For: BLENDS OF ESTERS WITH ISOMERIZED OLEFINS AND OTHER HYDROCARBONS AS BASE OILS FOR INVERT EMULSION OIL MUDS	:	PETITION

This is in response to the petition filed August 14, 2001, requesting that the above-identified application be granted Special Status under Section 708.02 (VI) of the MPEP.

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

Richard V. Fisher

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

Karen B. Tripp
Attorney at Law
P.O. Box 1301
Houston, TX 77251-1301

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

KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH CA 92660

MAIL

SEP 1 2 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:)
George W. Peters)
Application No.: 09/929,473)
Filed: August 13, 2001)
For: GAS/OIL WELL MONITORING)
SYSTEM)

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Supplemental Request To Withdraw from Representation filed September 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 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 unless the Office receives proper notification of a change of correspondence address.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

CC: George W. Peters
890 W. 15th Street, Unit 103
Newport Beach, CA 92663

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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WENDEROTH, LIND & PONACK, L.L.P.
2033 K STREET N. W.
SUITE 800
WASHINGTON DC 20006-1021

MAIL

NOV 0 8 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Koichi HATA
Application No. 09/929,487
Filed: August 15, 2001
For: **DATA TRANSMISSION APPARATUS AND METHOD**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed October 13, 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 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 file is being forwarded to the examiner for appropriate action in due course.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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WASHINGTON, D.C. 20231
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112005

MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

NOV 10 2005

In re Application of:	:	
Kimikazu Matsumoto	:	DECISION ON PETITION
Serial No.: 09/929,488	:	TO VACATE OFFICE ACTION
Filed: August 15, 2001	:	
Attorney Docket No.: 250901/00	:	

This is a decision on the petition filed June 21, 2005, under 37 C.F.R. § 1.181, requesting entry of withdrawn claims 18 through 20 for the purpose of appeal and potentially available for rejoinder.

The petition is DISMISSED.

The application is in appeal status with an appeal brief, an examiner's answer and a reply brief having been filed. Petitioner requests clarification of the examiner's position regarding the rejoinder of withdrawn claims 18 through 20 and asserts that claims 18 through 20 be recognized as available for rejoinder.

As set forth under M.P.E.P. § 821.04, the propriety of the restriction requirement should be reconsidered when all the claims directed to the elected invention are in condition for allowance. Rejoinder involves the withdrawal of the restriction requirement between the elected invention with allowable claims and the non-elected invention and examination of the claims of the formerly non-elected invention. In order to be eligible for rejoinder, a claim directed to the non-elected invention must depend from or otherwise require all the limitations of an allowable claim. A withdrawn claim that does not require all the limitations of an allowable claim will not be rejoined. M.P.E.P. § 821.04(b) addresses rejoinder of process requiring an allowable product relevant to the inventions in the instant application. However, since there is no allowable claim directed to the elected invention, no review or discussion regarding the applicability of Office policy of rejoining the process claims with the device claims is necessary at this time.

Since there is no allowable claim at this time, reconsideration of the restriction and consideration of the process claims for rejoinder with the device claims is premature at this time. Furthermore, withdrawn claims 18 through 20 have not been examined by the examiner. As such, to consider these claims at this time would require dismissing the appeal and reopening prosecution.

For the above-stated reasons, the petition is dismissed.

Petitioner may request reconsideration of this decision once a decision on appeal is rendered and is favorable to the petitioner.

The examiner will consider the reply brief as it pertains to the appealed claims and take appropriate action prior to passing jurisdiction to the Board of Patent Appeals and Interferences.

Any inquiry concerning this petition should be directed to Frank G. Font, Supervisory Primary Examiner, at (571) 272-2415.

Janice A. Falcone, TC Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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MOUNTAIN VIEW CA 94041

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JUN 0 8 2009

OFFICE OF PETITIONS

In re Patent No. 6,940,454	:	
Issue Date: September 06, 2005	:	
Application No. 09/929,516	:	NOTICE UNDER 37 CFR. 1.28(c)
Filed: August 12, 2001	:	
Attorney Docket No. 24207-12244	:	

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

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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Trellis Intellectual Property Law Group, PC
1900 EMBARCADERO ROAD
SUITE 109
PALO ALTO, CA 94303

Mail Date: 05/03/2010

Applicant	: Sukendeep Samra	: DECISION ON REQUEST FOR
Patent Number	: 6789109	: RECALCULATION of PATENT
Issue Date	: 09/07/2004	: TERM ADJUSTMENT IN VIEW
Application No	: 09/929,526	: OF WYETH
Filed	: 08/13/2001	:
		:

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.

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

DEC 23 2002

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

SHERIDAN ROSS PC
1560 BROADWAY
SUITE 1200
DENVER CO 80202

In re Application of:
Edwin L. Adair et al.
Application No. 09/929,531
Filed: August 13, 2001
For: **REDUCED AREA IMAGING DEVICE INCORPORATED WITHIN WIRELESS ENDOSCOPIC DEVICES**

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition to make special filed on November 19, 2002, via facsimile under MPEP 708.02 (IV), applicant's age. The original petition filed with the application was not matched and cannot be located with the file.

A petition to make special under MPEP 708.02, IV, must show that petitioner is 65 years of age, or more. Acceptable evidence includes a birth certificate, copy of a driver's license, or simply a statement by the applicant. No fee is required.

The petition includes a statement by applicant. 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 will be forwarded to the examiner for action on the merits.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4701

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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DIW 03-02

Paper No. 7

LYON & LYON LLP
SUITE 4700
633 WEST FIFTH STREET
LOS ANGELES CA 90071-2066

COPY MAILED

MAR 1 8 2002

OFFICE OF PETITIONS

In re Application of	:
Neil H. Bander	:
Application No. 09/929,546	: DECISION GRANTING
Filed: 13 August, 2001	: PETITION
Attorney Docket No. 266/186	:

This is a decision on the petition filed 7 December, 2001 (certificate of mailing date 25 October, 2001), requesting that the above-identified application be accorded a filing date of 13 August, 2001, with Figures 12A-12F described in the specification as a part of the original disclosure.

The application was filed on 13 August, 2001. However, on 10 September, 2001, Initial Patent Examination Division mailed a Notice to File Corrected Application Papers stating that the application had been accorded a filing date of 13 August, 2001, but that, *inter alia*, Figure 12A-12F described in the specification appeared to have been omitted.

In response, on 7 December, 2001 (certificate of mailing date 25 October, 2001), the present petition was filed. Petitioners assert that Figures 12A-12F were among the application papers deposited in the USPTO on 13 August, 2001.

As a result of a further review of the papers in the USPTO file, the one (1) sheet of drawings containing Figures 12A-12F filed on 13 August, 2001, has been located in the file.

In view of the above, the "Notice" is vacated to the extent that it stated that Figures 12A-12F described in the specification appeared to have been omitted.

The petition is <u>granted</u>. As the present petition was necessitated due to an error by the Office, the petition fee of $130.00 will be refunded to counsel's deposit account, No. 12-2475.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 13 August, 2001, using the application papers filed on that date.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.

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

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 3-1-02

2 Serial/Patent # 09/929,546

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
122	Petition	3	12-7-01	$ 130.00
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130—

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 1 2 -- 2 4 7 5

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

DUE TO PTO ERROR

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: D WOOD TITLE: PET ATTY

SIGNATURE: DW PHONE: 305-6918

OFFICE: PETITIONS

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Kelly DATE: 3-18-02

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

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

FORM PTO 1577
(01/90)

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HORSHAM PA 19044

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OFFICE OF PETITIONS

In re Application of	:	
Wu et al.	:	
Application No. 09/929,553	:	
Filed: June 2, 2003	:	DECISION ON PETITION
Atty Docket No.: D2667	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed January 26, 2006.

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 February 11, 2005. The Notice set a non-extendable statutory period for reply of three (3) months. Accordingly, the application became abandoned on May 12, 2005. A Notice of Abandonment was mailed July 29, 2005.

With the instant petition Applicant has submitted the issue fee.

The Revocation of Power of Attorney and Appointment of New Power of Attorney has been entered and made of record.

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
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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BENJAMIN AARON ADLER
ADLER & ASSOCIATES
8011 CANDLE LANE
HOUSTON, TX 77071

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MAR 0 3 2004

OFFICE OF PETITIONS

NOTICE

In re Application of
Salih J. Wakil et al
Application No. 09/929,575
Filed: August 14, 2001
Attorney Docket No. D6374CIP

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 the Publishing Division.

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

09/929599

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:101105

DATE : October 11, 2005

TO SPE OF : ART UNIT 1731

SUBJECT : Request for Certificate of Correction on Patent No.: 6,746,573

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: Steven P. Griffin **Art Unit** 1731

OIPE JC61
JUN 2 3 2004
PATENT & TRADEMARK OFFICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231 on June 21, 2004

Bridget Brinkman
Name

Signature

Case 8674

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the patent of :
MICHAEL GOMER STELLJES, JR. ET AL. : U.S. Patent Number: 6,746,573 B2
Serial No. 09/929,599 : Issued: June 8, 2004
Filed: August 14, 2001 :
For METHOD OF DRYING FIBROUS STRUCTURES

OK TO Enter SPG 10/11/04

REQUEST FOR CERTIFICATION OF CORRECTION
UNDER 37 CFR 1.322

Certificate
JUN 2 8 2004
of Correction

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

It is requested that the attached Certificate of Correction be issued under 37 CFR 1.322 for the above-identified patent. The mistakes are apparently due to Patent Office printing errors.

(1) Column 17, line 3 of the issued patent, delete "die cores" and insert therefor --the pores--. The correct form appears in the amendment filed December 11, 2003 at page 4, line 26.

(2) Column 17, line 18 of the issued patent, delete "cater" and insert therefore --carrier--. The correct form appears in the specification at page 20, line 12.

(3) Column 17, line 25 of the issued patent, delete "cater" and insert therefore --carrier--. The correct form appears in the specification at page 20, line 21.

(4) Column 17, line 33 of the issued patent, delete "cater" and insert therefore --carrier--. The correct form appears in the specification at page 20, line 28.

(5) Column 18, line 11 of the issued patent, delete "cater" and insert therefore --carrier--. The correct form appears in the specification at page 20, line 36.

(6) Column 18, line 30 of the issued patent, delete "pares" and insert therefore --pores--. The correct form appears in the specification at page 21, line 10.

Correction of these mistakes is believed necessary to avoid ambiguity with respect to the patentees' disclosure and claims.

Respectfully submitted,

C. Brant Cook
Attorney for Applicant(s)
Registration No. 39.151
(513) 634-1533

Date: June 21, 2004
Customer No. 27752

28 JUN 2004

28 JUN 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,746,573 B2

DATED : June 8, 2004

INVENTOR(S) : Michael Gomer Stelljes, Jr. 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 17, line 3, "die cores" should read --the pores--.

Column 17, line 18, "cater" should read --carrier--.

Column 17, line 25, "cater" should read --carrier--.

Column 17, line 33, "cater" should read --carrier--.

Column 18, line 11, "cater" should read --carrier--.

Column 18, line 30, "pares" should read --pores--.

MAILING ADDRESS OF SENDER:

Customer No. 27752

PATENT NO. 6,746,573 B2

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FORM PTO 1050 (REV. 3-82)
P&G Case: 8674

28 JUN 2004

28 JUN 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, D.C. 20231
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Paper No. 7

DRINKER BIDDLE & REATH
ONE LOGAN SQUARE
18TH AND CHERRY STREETS
PHILADELPHIA, PA 19103-6996

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JUL 03 2002

OFFICE OF PETITIONS

In re Application of	:
John S. Quarterman et al	:
Application No. 09/929,608	: DECISION GRANTING
Filed: August 14, 2001	:STATUS UNDER 37 CFR 1.47(a)
For: PERFORMANCE MEASUREMENT	:
SYSTEM FOR LARGE COMPUTER	:
NETWORK	

This is in response to the petition under 37 CFR 1.47(a), filed March 15, 2002.

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 Irvin Dingle at (703) 306-5684.

This application is being forwarded to the Initial Patent Examination Unit.

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. 12

Lee, Mann, Smith, McWilliams, Sweeney & Ohlson
P.O. Box 2786
Chicago, IL 60690

FEB 5 2003

In re Application of:	:	
Galen M. Gareis	:	DECISION
Application No. 09/929,613	:	ON
Filed: August 13, 2001	:	PETITION
For: A Cable Separator Spline	:	

This is a decision on the petition filed December 2, 2002, to withdraw the holding of abandonment of the above-identified application.

The petition is **granted**.

A final Office action was mailed on April 12, 2002. The application was held abandoned for failure to file a proper response to the Office action and a Notice of Abandonment was mailed on November 27, 2002.

Petitioner contends that the above-identified Office action was not received. To support the petition, petitioner states that the Office action was not received and attests to the fact that a search of the file jacket and docket records has been made and both indicate that the Office action was not received. A copy of petitioner's docket records where the Office action would have been docketed had it been received and docketed was also submitted.

A review of the written record indicates no irregularity in the mailing of the Office action, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action 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 action 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 petition and supporting evidence satisfy the above-stated requirements. Accordingly, the petition is **granted**.

For the above state reason, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The application file is being forwarded to the Technology Center 2800 support staff for remailing the Office action dated April 12, 2002. The statutory period for response set therein will be reset to run three months from the date the Office action is remailed.

Inquiries regarding 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 9

Darrell J. Metcalf
905 N. Oak Avenue
Fillmore, CA 93015

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MAY 2 1 2004

OFFICE OF PETITIONS

In re Application of
Darrell Metcalf
Application No. 09/929,615
Filed: August 13, 2001
Attorney Docket No. APPAREL WITH CONTIGUOUS VIDEO-IMAGING SURFACE AND APPARATUS FOR CONTROLLING AND FORMATTING VIDEO IMAGERY ON SUCH SURFACES

DECISION ON PETITION

This is a decision on the "PETITION TO REVIVE," filed April 9, 2004.

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)."

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 5, 2003. This Office action set a shortened statutory period for reply of three (3) months from the mail date of the action. An amendment was filed on December 8, 2003 (certificate of mailing December 3, 2003). However, this amendment was determined by the examiner not to place the application in condition for allowance (See Advisory Action mailed December 18, 2003). No proper reply having been received and no extension of time obtained, the application became abandoned on December 6, 2003. The instant petition precedes the mailing of a Notice of Abandonment.

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 37 CFR 1.17(m);

(3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to 37 CFR 1.137(d).

The petition includes payment of the petition fee and a 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." 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). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition. No terminal disclaimer is required in this application.

However, the petition must be dismissed because it does not satisfy requirement (1) above.

On petition, applicant argued that there were extenuating circumstances and that the abandonment was unintentional. No additional response to the final rejection accompanied the petition.

The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law), (2) an amendment that *prima facie* places the application in condition for allowance, (3) the filing of a continuing application, (4) a request for continuing examination under § 1.114, or (5) if applicable, a § 1.129(a) submission.

In light of *pro se* applicant's arguments, the application file was forwarded to the examiner for consideration. The examiner reaffirmed that applicant has not submitted a response that *prima facie* places the application in condition for allowance. Thus, petitioner has failed to submit the required reply.

In order for the application to be revived, petitioner must submit the required reply within the meaning of 37 C.F.R. § 1.137(b)(1). As of the writing of this decision, no new amendment has been made of record in this application.

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: NANCY JOHNSON
SENIOR PETITIONS ATTORNEY

By hand: CUSTOMER SERVICE WINDOW[1]
2011 South Clark Place
Crystal Plaza Two Lobby
Arlington, VA 22202

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

---

[1] Effective June 5, 2004, patent correspondence delivered by hand or delivery services, other than the USPS, to the Customer Window must be addressed as follows:

U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop _____
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 12

Darrell J. Metcalf
905 N. Oak Avenue
Fillmore, CA 93015

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AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of :
Darrell Metcalf :
Application No. 09/929,615 :
Filed: August 13, 2001 :
Attorney Docket No. APPAREL WITH :
CONTIGUOUS VIDEO-IMAGING SURFACE :
AND APPARATUS FOR CONTROLLING AND :
FORMATTING VIDEO IMAGERY ON SUCH :
SURFACES :

DECISION ON PETITION

This is in response to the communication filed July 26, 2004 (certificate of mailing July 21, 2004). This paper is being treated as a renewed petition to revive under § 1.137(b).

The petition is **GRANTED**.

The above-identified application was abandoned for failure to timely file a proper reply to the final Office action mailed September 5, 2003. The initial petition was filed on April 9, 2004. By decision mailed May 21, 2004, the petition was dismissed for failure to submit the required reply.

With the instant renewed petition, applicant submitted a request for continued examination (RCE), including an amendment as the submission under § 1.114. Petitioner has now met all requirements for a grantable petition to revive.

As requested, the overpayment of $60 will be refunded. The refund is being processed separately by the Office of Finance.

The application is being forwarded to Technology Center 2673 for consideration by the examiner of the RCE.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAIL

Paper No. 6

MAR 1 1 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Keith Lutsch
WONG CABELLO LUTSCH RUTHERFORD & BRUCCULERI P.C.
20333 SH 249 Suite 600
Houston, TX 77070

In re Application of
David C. Banks, et al.
Application Serial No. 09/929,627
Filed: August 13, 2001
For: QUALITY OF SERVICE USING VIRTUAL CHANNEL TRANSLATOR

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed January 24, 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.

Power of Attorney to petitioner, has been revoked by the assignee.

For the above stated reason, the request is **DISMISSED AS MOOT**.

A courtesy copy of this decision is being mailed to petitioner at the address on the petition, however, all future communications from the Office will be directed to the above-listed correspondence address unless the Office receives proper notification otherwise.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc:
FENWICK & WEST, LLP
Two Palo Alto Square
Palo Alto, CA 94306

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OPPENHEIMER WOLFF & DONNELLY, LLP
PLAZA VII, SUITE 3300
45 SOUTH SEVENTH STREET
MINNEAPOLIS MN 55402-1609

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MAR 2 9 2007

OFFICE OF PETITIONS

In re Application of	:	
SLOAN, Ronald et al.	:	
Application No. 09/929,735	:	DECISION DISMISSING PETITION
Filed: August 13, 2001	:	UNDER 37 CFR 1.313(a)
Attorney Docket No. 60021.375702	:	

This is a decision on the petition under 37 CFR 1.313(a), filed March 13, 2007, requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance and Fee(s) Due was mailed on February 15, 2007, with the issue fee being due on or before May 15, 2007. The petition states that the issue fee in this case has not been paid.

The filing of a petition under 37 CFR 1.313(a) is unnecessary, since the mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue. *Note* MPEP §§ 706.07(h)(IX) and 1308.

Inquiries concerning this decision may be directed to Monica Graves at (571) 272-7253.

The matter is being referred to Technology Center AU 3625 for appropriate processing of the RCE filed March 13, 2007, and for consideration of the concurrently filed information disclosure statement.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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CHOATE, HALL & STEWART LLP
TWO INTERNATIONAL PLACE
BOSTON MA 02110

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AUG 0 9 2007

OFFICE OF PETITIONS

In re Application of	:	
Schueller et al.	:	
Application No. 09/929,736	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. 2002907-0002	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 26, 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 a Request for Continued Examination (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.

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) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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JAN 11 2006

TECHNOLOGY CENTER 2100

Osha & May L.L.P.
1221 McKinney Street
Suite 2800
Houston, Texas 77010

In re Application of: Tran, et al.	)	
Application No. 09/929,743	)	*SUA SPONTE*
Attorney Docket No. SUN-P6089	)	WITHDRAWAL OF HOLDING OF
Filed: August 13, 2001	)	ABANDONMENT
For: EXTENSIBLE CLIENT AWARE	)	
HIERARCHICAL FILE MANAGEMENT	)	
IN A WIRELESS PORTAL SYSTEM		

The status inquiry, by way of a telephone inquiry by Applicant on January 4, 2005 is acknowledged.

A review of the file indicates that a Notice of Abandonment was mailed on May 25, 2005. The notice indicated that the instant application was being held abandoned for failure to respond to the Non-Final Office letter mailed on November 4, 2004.

A further review of the file indicates that the Non-Final Office letter of November 4, 2004 was mailed to an incorrect address (IBM Corp., T.J. Watson Research Center, P.O. Box 218, Yorktown Heights, NY 10598). The file contents show a proper revocation in the power of attorney and change of correspondence address was received in the Office on August 24, 2004 and approved in the notice of acceptance mailed August 28, 2004. The address of record of the instant application has been updated to reflect the correct address, i.e. Osha & May LLP, 1221 McKinney Street, Suite 2800, Houston, TX 77010.

In accordance with MPEP §402.05, "revocation of the power of attorney becomes effective on the date that the revocation is RECEIVED in the Office (not on the date of ACCEPTANCE)". As a result of a USPTO clerical error, the Non-Final Office letter, as well as the Notice of Abandonment, were mailed to the wrong address.

In view of these facts, the abandonment of the application was clearly in error and is hereby **VACATED**. The Office regrets any inconvenience this may have caused.

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 and to **REDATE/REMAIL** the Non-Final Office letter of November 4, 2004 (restarting the shortened statutory period to begin with the remailing).

Inquiries to this decision may be directed to Special Programs Examiner Brian Johnson at (571) 272-3595.

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security

(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 >if the claims in the corresponding foreign application are of the same or similar scope to the claims in the U.S. application for which special status is requested<;

(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.

With respect to requirement (E), the petition does not contain a detailed discussion of the references to the extent required by 37 CFR 1.111(b) and (c). Note that the discussion must particularly point out how the claimed subject matter is patentable over the references. In the present case, for each cited reference, the petition states that essentially all of the limitations of the independent claims are not taught or suggested. However, a statement that the entirety of an independent claim is not disclosed by the prior art does not provide a sufficient distinction between the claimed invention and each of the cited references. Furthermore, it would be difficult to conclude that the pre-examination search was directed to the claimed invention if essentially none of the claim limitations were found in the "most closely related" prior art.

Because the petition fails to satisfy all of the criteria set forth above, the petition to make special is **DISMISSED**.

Any request for reconsideration must be filed within TWO (2) MONTHS from the mailing date of this decision.

The application will remain in the status of a new application awaiting action in its regular turn.

Pinchus M. Laufer
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
571-272-3599

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 8

Kenneth D. Sibley
Myers Bigel Sibley & Sajovec
PO Box 37428
Raleigh, NC 27627

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NOV 1 8 2002

OFFICE OF PETITIONS

In re Application of
Edward J. Noga
Application No. 09/929,787
Filed: August 14, 2001
Attorney Docket No. 5051.551

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 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 October 3, 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 December 4, 2001.

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

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. 6

KENNETH D. SIBLEY
MYERS BIGEL SIBLEY & SAJOVEC
POST OFFICE BOX 37428
RALEIGH, NC 27627

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SEP 16 2002

OFFICE OF PETITIONS

In re Application of	:	
Edward J. Noga et al	:	
Application No. 09/929,788	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. 5051-519	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 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 September 28, 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 November 29, 2001.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 11

JOHN S. PRATT, ESQ.
KILPATRICK STOCKTON LLP
SUITE 2800
1100 PEACHTREE STREET
ATLANTA, GA 30309-4530

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MAY 1 2 2004

OFFICE OF PETITIONS

In re Application of	:	
Emanuele et al.	:	
Application No. 09/929,819	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. 19720-0626	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed April 22, 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 non-final Office action mailed January 30, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on May 1, 2003. A Notice of Abandonment was mailed on September 8, 2003.

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

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $ extension of time fee submitted with the petition on 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 file is now being forwarded to Technology Center 1600 for further examination on the merits.

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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Paper No. 12

DICKE, BILLIG & CZAJA, P.L.L.C.
FIFTH STREET TOWERS
100 SOUTH FIFTH STREET, SUITE 2250
MINNEAPOLIS MN 55402

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MAR 1 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Maxine C. Thome and Scott P. Thome	:	
Application No. 09/929,827	:	DECISION ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. P147.102.101	:	
Title: LIGHT GUARD	:	

This is a decision on the petition under 37 C.F.R. §1.78(a)(6), filed June 2, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

The petition is **DISMISSED**.

On August 14, 2001, the above-identified application was filed without a proper reference to the prior provisional application. Petitioner now wishes to claim benefit of application number 60/225,353, filed August 15, 2000.

A petition for a late claim for benefit under 37 C.F.R. (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 C.F.R. §1.78(a)(5) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) If the reference required by 35 U.S.C. 119(e) and 37 C.F.R. §1.78(a)(5) of the prior-filed application, unless previously submitted[1]
(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 C.F.R. §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.

1 Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed provisional applications 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).

With the instant petition, petitioner has included an amendment which inserts a cross-reference to the priority document into the specification of the instant application, the surcharge, and a statement which is being construed as the proper statement of unintentional delay.

Unfortunately, the amendment contains an improper incorporation-by-reference. As set forth in 1268 OG 89:

> An incorporation-by-reference statement added after the filing date of an application is not permitted because no new matter can be added to an application after its filing date[2]. If an incorporation-by-reference statement is included in an amendment to the specification to add a benefit claim after the filing date of the application, the amendment would not be proper. When a benefit claim is submitted after the filing of an application, the reference to the prior application cannot include an incorporation-by-reference statement of the prior application[3]. Therefore, the Office will not grant a petition to accept a benefit claim that includes an incorporation-by-reference statement of a prior application, unless the incorporation-by-reference statement was submitted on filing of the application.

As the amendment contains an incorporation-by-reference statement that was submitted subsequent to the filing of the application, the instant petition cannot be granted.

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 §1.78(a)(6)."

The reply to this letter may be submitted by mail[4], hand-delivery[5], or facsimile[6].

The reply should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding *this decision* should be directed to Attorney Paul Shanoski at (703) 305-0011.

Charles Pearson
Director of the Office of Petitions
Office of Petitions
United States Patent and Trademark Office

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2 See 35 U.S.C. §132(a).
3 See Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980).
4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.
6 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned.

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 14

DICKE, BILLIG & CZAJA, P.L.L.C.
FIFTH STREET TOWERS
100 SOUTH FIFTH STREET, SUITE 2250
MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Application of :
Maxine C. Thome and Scott P. Thome :
Application No. 09/929,827 :
Filed: August 14, 2001 :
Attorney Docket No. P147.102.101 :
Title: LIGHT GUARD :

DECISION ON RENEWED PETITION

This is a decision on the renewed petition under 37 C.F.R. §1.78(a)(6), filed March 23, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

On August 14, 2001, the above-identified application was filed without a proper reference to the prior provisional application. Petitioner now wishes to claim benefit of application number 60/225,353, filed August 15, 2000.

The original petition, submitted on June 2, 2003, was dismissed via the mailing of a decision on March 10, 2004. Petitioner submitted an amendment which improperly attempted to insert an incorporation-by-reference, which is prohibited by 1268 OG 89, 35 U.S.C. §132(a), and Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). Since the amendment contained an incorporation-by-reference statement that was submitted subsequent to the filing of the application, the original petition was dismissed.

On renewed petition, Petitioner has submitted an acceptable amendment which claims benefit to the priority application but does not contain an improper incorporation by reference.

As such, the renewed petition is **GRANTED**.

After the mailing of this decision, the application will be forwarded to Technology Center 2800 for further processing.

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (703) 305-0011.

Brian Hearn for

Charles Pearson
Director of the Office of Petitions
Office of Petitions
United States Patent and Trademark Office

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OFFICE OF PETITIONS

MICHAEL BEST & FRIEDRICH
ONE SOUTH PINCKNEY STREET
P.O. BOX 1806
MADISON WI 53701

In re Patent No. 7,008,769
Issue Date: March 7, 2006
Application No. 09/929,865
Filed: August 14, 2001
Attorney Docket No. 7211.01

ON PETITION

This is a decision on the petition filed March 3, 2006, requesting withdrawal of the above-identified application from issue after payment of the issue fee.

The petition is **DISMISSED as moot.**

Unfortunately, the petition did not reach the appropriate official for decision within sufficient time to avert issuance of the application into a patent. Petitioner's attention is directed to 37 CFR 1.313(d), which states:

> A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials **before the date of issue.** Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

The information disclosure statement (IDS) has been placed in the file of the above-identified application without further consideration. See 37 CFR 1.97(l).

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

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

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Paper No. 11

NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

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SEP 2 3 2003

OFFICE OF PETITIONS

In re Application of :
Yehuda Afek, et al. :
Application No. 09/929,877 : DECISION GRANTING PETITION
Filed: August 14, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 0103376-00003 :

This is a decision on the petition, filed September 2, 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 October 16, 2001. 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. Petitioner explains that it was believed that the filing of a "'PCT Request' with the USPTO United States Receiving Office fully met their obligation under 35 U.S.C. 112(b)(2)(B)(iii) to notify the USPTO of the foreign or international filing of such invention."

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. Therefore, since a notification of foreign filing was required to be on a separate paper, the filing of the PCT application did not serve as the notification of foreign filing required by 35 U.S.C. § 122(b)(2)(B)(iii). It should be noted that the USPTO acts in a distinctly separate capacity, and in a dedicated, separate part of the Office, when it acts as a Receiving Office for the filing of applications and papers under the PCT. Accordingly, as a review of the contents of the file of the above-identified application shows that no notification of the October 16, 2001 filing of the PCT application was filed within 45 days after the filing date of the PCT application, applicants' failure to provide such timely notice of the filing of the PCT application, pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c), caused the above-identified application to become abandoned by operation of law after midnight November 30, 2001.

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.

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 2171 for examination in due course.

Sherry D. Brinkley

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

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OFFICE OF PETITIONS

In re Application of	:
Monte Mar et al	:
Application No. 09/929,891	: DECISION GRANTING PETITION
Filed: August 14, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. CYPR-CD00226	:

This is a decision on the petition, filed October 17, 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 September 19, 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 2193 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b) (along with any balance due or the amount due at the time of payment), 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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BEYER WEAVER LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

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MAR 2 6 2007

OFFICE OF PETITIONS

In re Patent No. 7,123,728 :
Issued: October 17, 2006 :
Application No. 09/929,935 : ON PETITION
Filed: August 15, 2001 :
Attorney Docket No. APL1P214-P2664 :

This is a decision on the petition under 37 CFR 1.182, filed December 20, 2006, requesting issuance of a duplicate Letters Patent for the above-identified application.

The petition is **DISMISSED**.

The file record discloses that the instant application matured into U.S. Patent No. 7,123,728 on October 17, 2006. However, petitioner contends that the patent was never received and it is presumed lost in the mail.

The showing required to establish non-receipt of an Office communication must include:

1. 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.

2. 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.[1]

In the absence of any irregularity there is a strong presumption that the communications was properly mailed to the applicant at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communications was not in fact received.

The showing in the instant petition is not sufficient to waive the petition fee because practitioner did not include a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

The $400.00 petition fee will not refunded at this time. If petitioner submits the necessary documents, the fee will then be refunded. Should petitioner choose not to submit the appropriate documents, a renewed petition should still be submitted with instructions to process the petition as normal and a duplicate Letters Patent will be issued.

---

[1] See MPEP 711.03(c) and notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

Petitioner also submitted a $130.00 petition fee. However, only the $400.00 fee is necessary. Accordingly, the $130.00 fee will be credited to petitioner's deposit account.

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 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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BEYER WEAVER LLP
P.O. BOX 70250
OAKLAND CA 94612-0250

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JUN 14 2007

OFFICE OF PETITIONS

In re Patent No. 7,123,728	:	
Issued: October 17, 2006	:	
Application No. 09/929,935	:	ON PETITION
Filed: August 15, 2001	:	
Attorney Docket No. APL1P214/P2664	:	

This is a decision on the renewed petition under 37 CFR 1.182, filed April 12, 2007 requesting issuance of a duplicate Letters Patent for the above-identified application.

The petition is **GRANTED**.

The file record discloses that the instant application matured into U.S. Patent No. 7,123,728 on October 17, 2006. However, petitioner contends that the patent was never received and it is presumed lost in the mail.

Petitioner has provided the proper evidence to establish non-receipt of the Letters Patent. The $400.00 petition fee will be refunded to petitioner's deposit account.

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206. Any questions concerning issuance of the duplicate Letters Patent should be directed to Krystal Paige at (703) 305-9250.

A copy of this decision is being forwarded to Publishing Division for issuance of a duplicate Letters Patent.

Liana Walsh
Petitions Examiner
Office of Petitions

cc: Krystal Paige, P/OPPD, South Tower 8C41 (FAX 571-273-9756)

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Paper No. 13

LISA HILLMAN
MCDONNELL BOEHNEN HULBERT & BERGHOFF
32ND FLOOR
300 S WACKER DRIVE
CHICAGO IL 60606

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JUN 2 6 2003

OFFICE OF PETITIONS

In re Application of
Cunningham, Hobbs, Pepper, Lin, Li, Pien
Application No. 09/929,957
Filed: August 15, 2001
For : LABEL-FREE HIGH-THROUGHPUT OPTICAL TECHNIQUE FOR DETECTING BIOMOLECULAR INTERACTIONS

: DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition filed January 22, 2002 under 37 CFR 1.47(a) to accord this application status in the absence of the signature of joint inventor Hobbs

The petition under 37 CFR 1.47(a) to accord this application status is **granted.**

The 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(a), this Office will forward notice of this application's filing date to non-signing inventor Hobbs at the address given in the petition. Notice of the filing of this application will also be published in the *Official Gazette*. The USPTO regrets the delay in treating the petition.

This application is being forwarded to Technology Center AU 1743.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED: July 19, 2006

In re Application of	:	
Cunningham, et al.	:	
Serial No. 09/929,957	:	
Filed: August 15, 2001	:	DECISION ON PETITION
For: LABEL-FREE HIGH-THROUGHPUT OPTICAL TECHNIQUE FOR DETECTING BIOMOLECULAR INTERACTIONS	:	

This is a decision on the petition filed October 21, 2005 requesting the acceptance of color photographs into the above-identified application.

On October 21, 2005, formal drawings, the present petition and authorization to charge counsel's deposit account for the $130.00 petition fee were filed. Petitioners request that a color photograph be accepted in order to fulfill the requirement for formal drawings. Petitioners argue that the color photograph is necessary to properly depict the subject matter of the drawing. In support of the petition, three (3) copies of the color photograph and an amendment to the specification, were filed.

37 CFR § 1.84(b)(2) states that color photographs will be accepted in utility patent applications only after granting a petition explaining why the color photographs are necessary. The petition must include the following:

(i) The appropriate fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings; and

(iii) The specification must contain the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

A review of the record reveals that petitioners have fulfilled the requirements of 37 CFR 1.84. The petition is granted. The color photographs have been accepted and will be forwarded to the Official Draftsperson for formal review.

PETITION GRANTED

Jill Warden
Supervisory Patent Examiner
Group Art Unit 1743

9-930004

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11405

Paper No.: _____

TO SPE OF : ART UNIT 2133 - LAMARRE

SUBJECT : Request for Certificate of Correction on Patent No.: 6954893B2

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

ROCHAUN JOHNSON
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 119

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

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

Comments:

ALBERT DECADY
SUPERVISORY PATENT EXAMINER
SPE

2133
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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JUL 25 2007

OFFICE OF PETITIONS

WIESNER & ASSOCIATES
366 CAMBRIDGE AVENUE
PALO ALTO, CA 94301

In re Application of
William B. Sweet, et al.
Application No. 09/930,029
Filed: August 14, 2001
Attorney Docket No. 00131-000100000

ON PETITION

This is a decision on the petition, filed April 10, 2007, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, September 1, 2006, which set a shortened statutory period for reply of three (3) months. No timely extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 1, 2006. It is noted that on March 6, 2007, applicant submitted an amendment, including a 5-month extension of time. Thereafter, on April 10, 2007, the present petition was filed.

Applicant is reminded that extensions of time under 37 CFR 1.136 are available only if asked for prior to or with the response. In no case, however, may an applicant respond later than the maximum time period set by statute. In this case, March 1, 2007. Therefore, if the question of abandonment arises when the provisions of 37 CFR 1.136 can no longer be used, then the application is abandoned when the unextended time for response has expired, i.e., December 1, 2006. Therefore, the 5-month extension of time submitted on March 6, 2007 is untimely and will be credited to counsel'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 the amendment on March 6, 2007; (2) the petition fee of $750; and (3) the required statement of unintentional delay.

The application file is being forwarded to Technology Center AU 2137 for consideration of the amendment filed March 6, 2007.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3204. All other inquiries regarding this application should be directed to the Technology Center.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. 11

Robert A Saltzberg
Morrison and Foerster LLP
425 Market Street
San Francisco CA 94105-2482

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JUN 1 8 2004

OFFICE OF PETITIONS

In re Application of	:
Ken Hanscom	:DECISION GRANTING PETITION
Application No. 09/930,120	:
Filed: August 14, 2001	:
Attorney Docket No. Q00-1027-	:
US1/11198.70	:

This is a decision on the petition under 37 CFR 1.181, filed January 9, 2004, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application became abandoned for failure to respond timely to the Notice to File Missing Parts of Nonprovisional Application, mailed September 26, 2001, which set forth a two-month extendable period to respond. In the apparent absence of a timely filed response, the application was held abandoned on December 27, 2001. A Notice of Abandonment was mailed on May 23, 2003.

Petitioner asserts that petitioner timely filed an executed declaration and authorized payment of the basic filing fee, claim fees, and a surcharge in response to the Notice of September 26, 2001. In support of the petition, petitioner submitted copies of the "Response To Notice To File Missing Parts Of Application Filing Date Granted," an executed declaration, and a check in the amount of $1,338.00, which were said to have been mailed by petitioner but not received by the United States Patent and Trademark Office. The "Response To Notice To File Missing Parts Of Application Filing Date Granted," included a proper certificate of mailing dated November 20, 2001.

37 CFR 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in

accordance with paragraph (a) of this section, but not received by the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

In view of the above, the required reply was timely filed pursuant to 37 CFR 1.8. Accordingly, the holding of abandonment is withdrawn and the petition is granted.

This application 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) 306-5589.

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
www.uspto.gov

Robert A Saltzberg
Morrison and Foerster LLP
425 Market Street
San Francisco CA 94105-2482

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APR 17 2008

OFFICE OF PETITIONS

In re Application of
Ken Hanscom
Application No. 09/930,120
Filed: August 14, 2001
Attorney Docket No. Q00-1027-US1 / 11198.70

ON PETITION

This is a decision on the petition under 37 CFR 1.137 filed December 10, 2007 which is being treated as a petition under 37 CFR 1.137(a) to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely file a proper response to the final Office action mailed January 12, 2006. It is noted the instant petition is directed towards the Notice of Abandonment mailed October 31, 2007 which indicated applicant's failure to file a proper response to the final Office action mailed February 8, 2007 but, in fact, the application was abandoned on April 13, 2006 for failure to properly respond to the January 12, 2006 final rejection.

In regard to the January 12, 2006 final rejection, the examiner admitted in an interview summary mailed February 17, 2006 that the finality was not proper although he did not send out a replacement Office action until September 14, 2006. Applicant's amendment filed February 2, 2006 failed to put the case in condition for allowance and was thus not a proper response to the January 12, 2006 final rejection and the application should have gone abandoned at the end of the three month shortened statutory period for response. A subsequent final Office action was mailed February 8, 2007, an amendment was filed April 10, 2007 which did not put the application in condition for allowance, and a notice of abandonment was mailed October 31, 2007. A review of the February 8, 2007 Office action indicates the finality of the action was not proper for the reasons set forth in the instant petition. Therefore, the Office action should have been non-final, the amendment filed April 10, 2007 should have been treated as a timely filed response to a non-final Office action and the notice of Abandonment should not have been

mailed. Nevertheless this decision ratifies the ensuing prosecution and restores this application to pending status.

This application is returned to pending status and is being returned to Technology Center Art Unit 3654 for consideration of the amendment filed April 10, 2007 in due course.

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 Carl Friedman at (571) 272-6842.

David Bucci
Petitions Examiner
Office of Petitions

Cc: James P. Broder
The Law Office of Steven G. Roeder
10680 Treena St., Ste. 100
San Diego, California 92131

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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ROBERT A. SALTZBERG
MORRISON AND FOESTER LLP
425 MARKET STREET
SAN FRANCISCO, CA 94105-2482

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JUL 27 2009

OFFICE OF PETITIONS

In re Application of	:	
Ken Hanscom	:	
Application No. 09/930,120	:	DECISION ON PETITION
Filed: August 14, 2001	:	TO WITHDRAW
Attorney Docket No. Q00-1027-US1 / 11198.70	:	FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 CFR. § 1.36(b), filed March 24, 2009.

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

A review of the file record indicates that the power of attorney to attorneys/agents associated with the above application has been revoked by the assignee of the patent application on May 18, 2009. 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 JoAnne Burke at 571-272- 4584.

JoAnne Burke
Petitions Examiner
Office of Petitions

cc: James P. Broder
Roeder & Broder LLP
9915 Mira Mesa Blvd. Suite 300
San Diego CA 92131

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

KARLQUIST SPARKMAN
ONE WORLD TRADE CENTER
SUITE 1600
121 S.W. SALMON STREET
PORTLAND, OR 97204

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AUG 07 2003

OFFICE OF PETITIONS

In re Application of
Harold O. Schwartz et al
Application No. 09/930,123
Filed: August 14, 2001
Attorney Docket No. 3790-60721

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed July 17, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for the failure to notify the Office 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**.

The instant application was filed on August 14, 2001, which included a nonpublication request 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.

Petitioner herein, Mr. Michael P. Girard, states that, on August 8, 2002 a PCT application was filed in the United States receiving office and a corresponding Malaysian application was filed on August 14, 2002. Petitioner further states that a request to rescind the previous nonpublication request was filed on August 5, 2002. The request to rescind filed by certificate of mailing on August 5, 2002, and received in the USPTO on August 13, 2002, did not inform the USPTO that this application was being filed as a counterpart international or foreign application. Notification of the filing of the counterpart international or foreign 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 filing on August 8 and August 14, 2002 of the counterpart international or foreign application did not occur within 45 days of such filing, this application is regarded as abandoned as of midnight on September 22, 2002.

Petitioner states that it is not believed a separate notification of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii) was required because the rescission of the nonpublication request did not occur subsequent to the international or foreign filing. Therefore, there was no requirement to file an additional notice of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii).

It is noted that a request to rescind was mailed via certificate of mailing on August 5, 2002 but was not received in the USPTO until August 13, 2002. As noted in the Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(i), 1272 OG 1 (July 1, 2003), available at http://www.uspto.gov/web/patents/patog/week26/, no benefit is given to a certificate of mailing (37 CFR 1.8) on a rescission of a nonpublication request since such is not considered to be a paper required to be filed in the USPTO as provided for in 37 CFR 1.8(a). Therefore, the terms of 37 CFR 1.8 by their terms do not apply in this situation, and the USPTO must use the actual date of receipt in the USPTO, as defined in 37 CFR 1.6, in determining whether the nonpublicatin request was rescinded before or on the date of the filing of the counterpart or foreign application in an eighteen-month publication country such that the application may be considered an application in which the nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) was never made. In the instant case, since the earliest filing of a counterpart or foreign application in an eighteen-month publication country occurred on August 8, 2002 and the request to rescind was not received in the USPTO until August 13, 2002, a proper notice of foreign filing was required to be filed in the USPTO no later than 45 days after the date of filing of the counterpart application to avoid abandonment of the application. The file record fails to evidence that such notice was received prior to or within 45 days of the filing of the counterpart applications in an eighteen month publication country that requires publication 18 months after filing.

Petitioner further argues that it is his understanding that the USPTO considers a request to rescind a nonpublication request as the proper notice of foreign filing. In this regard, petitioner references the different forms endorsed and distributed by the USPTO where one form only contained the sentence "I hereby rescind the request that the above-identified application not be published under 35 U.S.C. 122(b)," while a later version of the form included the note that "[f]iling this rescission of a previous nonpublication request is considered the

notice of a subsequent foreign or International filing required by 35 U.S.C. 122(b)(2)(B)9iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days [sic] (45) days after the date of filing of such foreign or international application."

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).

The American Inventors Protection Act of 1999 required publication of certain patent applications filed on or after November 29, 2000, and allowed applicants to request nonpublication if the invention disclosed in the application had not been and would not be the subject of an application filed in another country, or pursuant to an international agreement that required publication of patent applications eighteen months after filing. The Act permitted applicants to rescind the nonpublication request at any time, but also required applicants to notify the USPTO if they had made a nonpublication request (with the certification that the invention disclosed in the application had not been and would not be "foreign filed," and then did foreign file). If an applicant requested nonpublication, and then did not provide notice of foreign filing no later than 45 days of the foreign filing, the statute provides that the application would be regarded as abandoned. An applicant who rescinded a nonpublication request after filing the U.S. application but before foreign filing the application is not understood to be required to also file a notice of foreign filing, since the rescinding of the nonpublication request prior to foreign filing would nullify the nonpublication request (if received in the USPTO prior to the date of foreign filing).

Further, petitioner is advised that, because the USPTO expected rescission (applicants who initially requested nonpublication, but later changed their mind as to the desire for nonpublication) to be an uncommon, but likely, event, the USPTO initially provided a form for rescission. The USPTO did not initially provide a form for a notice of foreign filing, because the USPTO did not anticipate receiving many such notices since it would only be necessary if applicant had a change of heart and decided to file abroad after having made the decision not to file abroad when he initially filed in the United States. In general, the USPTO provides forms for common circumstances, but not for rare situations (as was not expected that many notices of foreign filing would be filed). The USPTO provides, as a courtesy, suggested forms for use. It is noted

that USPTO's form for rescinding a nonpublication request, PTO/SB/36 (dated 4/01 or 10/01) provides a note that states "[f]iling this rescission of a previous nonpublication request is considered the notice of subsequent foreign or international filing required by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five (45) days after the date of filing of such foreign or international application" instead of an affirmative statement. The USPTO form for a rescission can be accepted as a notice of foreign filing because it makes some mention of foreign filing. Applicant-created rescission forms that fail to include any indication from the applicant that the paper filed by applicant is intended also to be a notice of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii) cannot be treated as a notice of foreign filing. An applicant who has removed the language on the form intended to provide notice of foreign filing cannot be considered to be providing such a notice when the applicant has done all that is possible to avoid providing a notice of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii) to the USPTO. Applicant is reminded that the USPTO has no authority to waive a requirement of the patent statute. Thus, applicants are cautioned to familiarize themselves with the requirements of the patent statute to ensure that a submission, whether on a USPTO-provided form or an applicant-created form that is modeled after a USPTO-created form, meets the requirements of the patent statute that are applicable to the particular submission. The mere filing of a rescission does not imply that the invention has been or will be filed in another country, and instead suggests that the applicant now desires to have the application published so the applicant could take advantage of the provision rights provisions of the statute. For the above-stated reasons, if a rescission does not include any mention of a foreign filing, the rescission cannot be considered as a notice of foreign filing to satisfy the requirement of 35 U.S.C. 122(b)(2(B)(iii).

In view of the above, and since a notification as required by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) was not filed within 45 days of the counterpart international or foreign application, this application is regarded as abandoned as of midnight September 22, 2002. Accordingly, a petition to revive this application pursuant to the provisions of 37 CFR 1.137(b) is the appropriate remedy to relieve this application from its abandoned status.

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 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). 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 [notification of foreign filing under 35 U.S.C. § 122(b)(2)(B)(iii)] 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.

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 U.S.C. § 41(c)(7). Therefore, the $1,300 petition fee submitted is not refundable.

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 1754 for appropriate action on the reply to the restriction requirement of May 1, 2003 received June 5, 2003.

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
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Paper No. 22

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

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MAR 2 3 2004

OFFICE OF PETITIONS

In re Application of :
Takashi Ipposhi, et al. :
Application No. 09/930,202 :
Filed: August 16, 2001 :
Attorney Docket No. 212812US2 :

ON PETITION

This is a decision on the petition under 37 CFR(c)(2) to withdraw the above-identified application from issue after payment of the issue fee, filed March 22, 2004.

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 18, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

After the application is received in the Office of Petitions, it will be forwarded to Technology Center AU 2815 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
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 indicted as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language on 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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OIPE JC177
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PATENT & TRADEMARK OFFICE

Paper No.

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

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MAR 2 3 2004
OFFICE OF PETITIONS
ON PETITION

In re Application of
Takashi Ipposhi, et al.
Application No. 09/930,202
Filed: August 16, 2001
Attorney Docket No. 212812US2

This is a decision on the petition under 37 CFR(c)(2) to withdraw the above-identified application from issue after payment of the issue fee, filed March 22, 2004.

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 18, 2004, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance. [1]

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

After the application is received in the Office of Petitions, it will be forwarded to Technology Center AU 2815 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

RECEIVED: 3 24 04
OBLON, SPIVAK, McCLELLAND
MAIER & NEUSTADT, P.C.
DOCKETING DEPT.
Initials/Date Docketed: 3 24 04
Type of Resp(s):
Due Date(s):

[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 indicted as being due or not, the Issue Fee Transmittal Form must be completed and timely submitted to avoid abandonment. Note the language on bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

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Paper No. 5

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

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DEC 0 4 2001

OFFICE OF PETITIONS

In re Application of	:
Griffith, Van Rafelghem, Russell,	:
and Hirsch	: DECISION REFUSING STATUS
Application No. 09/930,288	: UNDER 37 CFR 1.47(a)
Filed: 16 August, 2001	:
Attorney Docket No. 108214	:

This is in response to the petition under 37 CFR 1.47(a)[1] filed on 16 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 16 August, 2001,

---

[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.

without an executed oath or declaration. Accordingly, on 19 September, 2001, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring, *inter alia*, a signed oath or declaration and a surcharge for its late filing. In response, on 16 November, 2001, petitioners submitted, *inter alia*, a declaration naming Thomas Griffith, Stefan Van Rafelghem, Stephen Russell, and Ronald Hirsch as joint inventors and signed by joint inventors Griffith, Russell, and Hirsch on behalf of themselves and joint inventor Van Rafelghem; the late-filing surcharge, and the present petition under 37 CFR 1.47(a).

Petitioners assert that Van Rafelghem was sent a copy of the application but failed to execute and return 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 (1) and (2).

In regards to item (1), petitioners have not provided sufficient proof that a copy of the application was sent to the non-signing inventor. Specifically, petitioners have enclosed a letter from Sally Bauer, Director of Contacts for Avtec Systems, Inc., to Van Rafelghem at his last known address purporting to sent the application. However, the application identified in the transmittal letter is provisional Application No. 60/231,412 rather than the present nonprovisional application. Additionally, the applications identified by invention title at the end of the transmittal letter both have different invention titles than the present application. As such, it is unclear that the present application was sent to the non-signing inventor.

Petitioners may show proof that the application (specification, including claims, drawings, if any, and the declaration) was sent or given to the non-signing inventor by providing, with any renewed petition, 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.

Likewise, before a *bona fide* refusal can be shown, the non-signing inventor must have been given an opportunity to review the application. Therefore, petitioners must show proof that the non-signing inventor refuses to sign the declaration after being sent or given a copy of the application papers.[2] If there is a written refusal, petitioners should submit a copy of that refusal 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.

With regards to item (2), the declaration is defective in that the mailing address listed in the declaration for the non-signing inventor does not appear to be the address at which he customarily receives his mail.[3] The object of requiring each applicant's mailing address is to enable the Office to communicate directly with the applicant if desired.[4] The address listed in the declaration is that of Avtec Systems, Inc., the address *from* which the above-referenced letter to the non-signing inventor was mailed. Obviously, the non-signing inventor cannot be reached at this address. In applications filed under 37 CFR 1.47, the inventor's most recent home address must be given to enable the Office to communicate directly with the inventor as necessary.[5]

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

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[2] Id.

[3] See MPEP 605.30.

[4] Id.

[5] Id.

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.

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
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DNV 02-02

Paper No. 8

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

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FEB 20 2002
OFFICE OF PETITIONS

In re Application of	:
Griffith, Van Rafelghem, Russell,	:
and Hirsch	: DECISION ACCORDING STATUS
Application No. 09/930,288	: UNDER 37 CFR 1.47(a)
Filed: 16 August, 2001	:
Attorney Docket No. 108214	:

This is in response to the renewed petition under 37 CFR 1.47(a)[1] filed on 1 February, 2002.

The petition is **GRANTED**.

Petitioner has shown that the non-signing inventor, Stefan Van Rafelghem, has refused to join in the filing of the above-identified application after having been sent a copy of the application papers. Specifically, petitioners have supplied a copy of the letter transmitting a copy of the application papers to Van Rafelghem as well as a Certified Mail return receipt postcard on which Van Rafelghem acknowledged receipt of the application. Van Rafelghem has failed, however, to sign and return the declaration naming him as a joint inventor along with Thomas Griffith, Stephen Russel, and Ronald Hirsch.

---

[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.

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
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 02-02

Stefan Van Rafelghem
13562 Northbourne Drive
Centreville, VA 20120-1787

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FEB 2 0 2002

OFFICE OF PETITIONS

In re Application of
Griffith et al.
Application No. 09/930,288
Filed: 16 August, 2001
For: METHODS AND SYSTEMS FOR INTERFACING WIRED/WIRELESS HYBRID SYSTEMS

Dear Mr. Van Rafelghem:

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 Douglas I. Wood 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).

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

OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Patent Department
Mitsubishi Electric Research Laboratories, Inc.
201 Broadway
Cambridge, MA 02139

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MAY 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Welch et al.	:	
Application No. 09/930,322	:	
Filed: August 15, 2001	:	DECISION ON PETITION
For:	:	
SYSTEM AND METHOD FOR	:	
ANIMATING REAL OBJECTS WITH	:	
PROJECTED IMAGES	:	

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed April 10, 2006.

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 July 5, 2005. The Notice set a non-extendable statutory period for reply of three (3) months. Accordingly, the application became abandoned on October 6, 2005. A Notice of Abandonment was mailed April 3, 2005.

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
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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MAR 28 2007

OFFICE OF PETITIONS

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

In re Application of :
Steven French, et al. :
Application No. 09/930,328 : ON PETITION
Filed: August 15, 2001 :
Attorney Docket No. AUS920010290US1 :

This is a decision in response to the petition, filed November 30, 2006, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to an Office action mailed October 11, 2005. A Notice of Abandonment was mailed on October 23, 2006. In response, on November 30, 2006, the present petition was filed.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) the requisite statement of unintentional delay.

The application is being referred to Technology Center AU 2137 for consideration of the amendment filed November 30, 2006.

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

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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P.O. Box 1450
Alexandria, VA 22313-1450
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JERRY W. HERNDON
IBM CORPORATION T81/503
P O BOX 12195
RESEARCH TRIANGLE PARK, NC 27709

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JUN 0 6 2006
OFFICE OF PETITIONS

In re Application of	:
Roy F. Brabson et al	: DECISION ON PETITION
Application No. 09/930,360	: UNDER 37 CFR 1.137(b)
Filed: August 15, 2001	:
Attorney Docket No. RSW920010057US1	:

This is a decision on the petition under 37 CFR 1.137(b), filed April 21, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely submit corrected drawings on or before February 17, 2006 as required by the Notice of Allowability mailed November 17, 2005. A Notice of Abandonment was mailed on April 17, 2006.

The petition satisfies the requirements for a grantable petition in that the reply in the form of corrected drawings, which have been approved by the Official Draftsperson (note attachment), the petition fee of $1,500, and the required statement of unintentional delay have been submitted. Accordingly, the submission of corrected drawings is accepted as having been unintentionally delayed.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Publishing Division.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Notice of Official Draftsperson's Drawing Review

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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APR 13 2007

POWER DEL VALLE LLP
233 WEST 72 STREET
NEW YORK NY 10023

In re Application of:
CARLUCCI, CHRISTINE et al
Serial No.: 09/930,398
Filed: Aug. 15, 2001
Docket: 262.802
Title: MEDICAL TUBING SECURING APPARATUS

DECISION ON PETITION TO WITHDRAW HOLDING OF FINALITY

This is a decision on the petition filed on Sep. 11, 2006 to withdraw the finality of the Office action of Jul. 11, 2006. The petition is being considered pursuant to 37 CFR 1.181 and no fee is required for the petition.

The petition is **DISMISSED**.

In the petition, the applicant requested withdrawal of the finality of the Office action dated Sep. 11, 2006 because the new ground of rejection in the final rejection was neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement filed pursuant to 37 CFR 1.97(c).

The record shows that:

1. In response to the non-final Office action dated Oct. 29, 2002, on Feb. 5, 2003, the applicant filed an amendment to the claims.
2. On Apr. 9, 2003 the examiner issued a final Office action rejecting all of the claims.
3. On Sep. 11, 2003, the applicant filed an appeal brief.
4. On Nov. 28, 2003, the examiner re-opened prosecution of the applicant and issued a non-final Office action with new grounds of rejection based on new prior art references.
5. On Feb. 27, 2004, the applicant filed a request for reconsideration with no amendments to the claims.
6. On May 18, 2004, the examiner issued a final Office action rejecting all of the claims.
7. On Oct. 21, 2004, the applicant filed an appeal brief.
8. On Jan. 11, 2005, the examiner re-opened prosecution of the application and issued a non-final Office action.
9. On May 16, 2005, the applicant filed an amendment to the claims.
10. On Aug. 19, 2005, the examiner issued a final Office action rejecting all of the claims.

11. On Nov. 7, 2005, the applicant filed an RCE with amendments to all of the independent claims 1, 6 and 11.
12. On Jan. 20, 2006, the examiner issued a non-final Office action rejecting all of the claims.
13. On Apr. 12, 2006, the applicant filed an amendment to all of the independent claims 1, 6 and 11.
14. On Jul. 11, 2006, the examiner rejected all of the claims with new grounds of rejection.
15. On Aug. 9, 2006, the applicant filed an after final response. In the response, the applicant requested that the finality of the final Office action mailed Jul. 11, 2006 be withdrawn.
16. On Sep. 11, 2006, the applicant filed the current request for withdrawal of finality of Office action and issuance of a new Office Action.
17. On Dec. 11, 2006, the applicant filed a pre-appeal brief conference request.
18. On Jan. 19, 2007, the examiner issued an advisory action responding to the after final response dated Aug. 9, 2006 and stated his position why the office action dated Jul. 11, 2006 was made final and would not be withdrawn.
19. On Feb. 12, 2007, the applicant filed an appeal brief.
20. On Mar. 8, 2007, the examiner issued a pre-appeal brief conference decision letter.

Discussion and Analysis

Relevant portions of MPEP 706.07(a): Final Rejection, When Proper on Second Action, states:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

In order to determine whether or not the amendment filed Apr. 12, 2006 necessitated the new grounds of rejection in the final Office action of Jul. 11, 2006, a comparison of the amended claims filed on Apr. 12, 2006 and the claims filed on Nov. 7, 2005 must be made. A review of the amended claims presented on Apr. 12, 2006 shows that the independent claims 1, 6 and 11 were narrowed in scope by adding the new limitation "such that the band is composed of no more than two layers of fabric anywhere along the length". Based on the newly presented claims, the examiner is now required to consider limitations directed to a band having no more than two

layers of fabric anywhere along the length. The addition of "such that the band is composed of no more than two layers of fabric anywhere along the length" necessitated the new grounds of rejection by requiring US patent 5,117,510 to Broussard et al. to be applied under 35 USC 102 in the final Office action of Jul. 11, 2006. Petitioner's argument in the petition that the applicant's amendment on Apr. 12, 2006 are to substantially the same subject matter as what had been originally filed in Aug. 2001 is not convincing because the applicant has amended the claims numerous times since the original claims were filed on Aug. 2001. In addition, petitioner's request for the examiner to consider applicant's comments in the response filed Aug. 11, 2006 has already occurred with the advisory action issued by the examiner on Jan. 19, 2007. The review of the record shows that the examiner was in compliance with applicable examining practice as set forth in MPEP 706.07(a). Therefore, the amendment to the claims presented on Apr. 12, 2006 necessitated the new grounds of rejection presented in the final Office action issued on Jul. 11, 2006. The examiner's finality of the Office action is correct.

Conclusion

For the foregoing reasons, the relief requested by petitioners will not be granted. Specifically, the examiner's finality of the Office action dated Jul. 11, 2006 is proper.

The application is being forwarded to Examiner Erezo of Art Unit 3731 for further processing. 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". Any inquiry regarding this decision should be directed to Marc Jimenez, Training Quality Assurance Specialist, at (571) 272-4530.

The petition is dismissed.

Frederick R. Schmidt, Director
Technology Center 3700

PAGE 1/4 * RCVD AT 6/26/2007 6:19:34 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/14 * DNIS:2734856 * CSID:2125800325 * DURATION (mm-ss):01-44

POWER DEL VALLE LLP
COUNSELLORS AT LAW
233 WEST 72ND STREET
NEW YORK, NEW YORK 10023

Telephone 212-877-0100 **Facsimile 212-580-0325**

TELEFACSIMILE TRANSMISSION

TO:	Henry Yuen	FROM:	Marguerite Del Valle
FAX:	571-273-4856	FILE:	262.802
DATE:	June 26, 2007	PAGES:	4 (including this page)

Applicants: Christine Carlucci and Gerard Carlucci
For: Medical Tubing Securing Device
Serial No.: 09/930,398
Filed: August 15, 2001
Group: 3761

Enclosed as you requested is a copy of the decision of April 13, 2007 on applicant's petition for withdrawal of finality of an Office action.

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PAGE 2/4 * RCVD AT 6/26/2007 6:19:34 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/14 * DNIS:2734856 * CSID:2125800325 * DURATION (mm-ss):01-44

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Alexandria, VA 22313-1450
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APR 13 2007

POWER DEL VALLE LLP
233 WEST 72 STREET
NEW YORK NY 10023

In re Application of:
CARLUCCI, CHRISTINE et al
Serial No.: 09/930,398
Filed: Aug. 15, 2001
Docket: 262.802
Title: MEDICAL TUBING SECURING APPARATUS

DECISION ON PETITION TO WITHDRAW HOLDING OF FINALITY

This is a decision on the petition filed on Sep. 11, 2006 to withdraw the finality of the Office action of Jul. 11, 2006. The petition is being considered pursuant to 37 CFR 1.181 and no fee is required for the petition.

The petition is **DISMISSED**.

In the petition, the applicant requested withdrawal of the finality of the Office action dated Sep. 11, 2006 because the new ground of rejection in the final rejection was neither necessitated by applicant's amendment nor based on information submitted in an information disclosure statement filed pursuant to 37 CFR 1.97(c).

The record shows that:

1. In response to the non-final Office action dated Oct. 29, 2002, on Feb. 5, 2003, the applicant filed an amendment to the claims.
2. On Apr. 9, 2003 the examiner issued a final Office action rejecting all of the claims.
3. On Sep. 11, 2003, the applicant filed an appeal brief.
4. On Nov. 28, 2003, the examiner re-opened prosecution of the applicant and issued a non-final Office action with new grounds of rejection based on new prior art references.
5. On Feb. 27, 2004, the applicant filed a request for reconsideration with no amendments to the claims.
6. On May 18, 2004, the examiner issued a final Office action rejecting all of the claims.
7. On Oct. 21, 2004, the applicant filed an appeal brief.
8. On Jan. 11, 2005, the examiner re-opened prosecution of the application and issued a non-final Office action.
9. On May 16, 2005, the applicant filed an amendment to the claims.
10. On Aug. 19, 2005, the examiner issued a final Office action rejecting all of the claims.

JUN-26-2007 18:19 From:POWER DEL VALLE LLP 2125800325 To:USPTO P.2/4

PAGE 3/4 * RCVD AT 6/26/2007 6:19:34 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/14 * DNIS:2734856 * CSID:2125800325 * DURATION (mm-ss):01-44

11. On Nov. 7, 2005, the applicant filed an RCE with amendments to all of the independent claims 1, 6 and 11.
12. On Jan. 20, 2006, the examiner issued a non-final Office action rejecting all of the claims.
13. On Apr. 12, 2006, the applicant filed an amendment to all of the independent claims 1, 6 and 11.
14. On Jul. 11, 2006, the examiner rejected all of the claims with new grounds of rejection.
15. On Aug. 9, 2006, the applicant filed an after final response. In the response, the applicant requested that the finality of the final Office action mailed Jul. 11, 2006 be withdrawn.
16. On Sep. 11, 2006, the applicant filed the current request for withdrawal of finality of Office action and issuance of a new Office Action.
17. On Dec. 11, 2006, the applicant filed a pre-appeal brief conference request.
18. On Jan. 19, 2007, the examiner issued an advisory action responding to the after final response dated Aug. 9, 2006 and stated his position why the office action dated Jul. 11, 2006 was made final and would not be withdrawn.
19. On Feb. 12, 2007, the applicant filed an appeal brief.
20. On Mar. 8, 2007, the examiner issued a pre-appeal brief conference decision letter.

Discussion and Analysis

Relevant portions of MPEP 706.07(a): Final Rejection, When Proper on Second Action, states:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

In order to determine whether or not the amendment filed Apr. 12, 2006 necessitated the new grounds of rejection in the final Office action of Jul. 11, 2006, a comparison of the amended claims filed on Apr. 12, 2006 and the claims filed on Nov. 7, 2005 must be made. A review of the amended claims presented on Apr. 12, 2006 shows that the independent claims 1, 6 and 11 were narrowed in scope by adding the new limitation "such that the band is composed of no more than two layers of fabric anywhere along the length". Based on the newly presented claims, the examiner is now required to consider limitations directed to a band having no more than two

JUN-26-2007 18:19 FROM:POWER DEL OHLLE LLP 2125800325 TO:USPTO P.3/4

PAGE 4/4 * RCVD AT 6/26/2007 6:19:34 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-3/14 * DNIS:2734856 * CSID:2125800325 * DURATION (mm-ss):01-44

layers of fabric anywhere along the length. The addition of "such that the band is composed of no more than two layers of fabric anywhere along the length" necessitated the new grounds of rejection by requiring US patent 5,117,510 to Broussard et al. to be applied under 35 USC 102 in the final Office action of Jul. 11, 2006. Petitioner's argument in the petition that the applicant's amendment on Apr. 12, 2006 are to substantially the same subject matter as what had been originally filed in Aug. 2001 is not convincing because the applicant has amended the claims numerous times since the original claims were filed on Aug. 2001. In addition, petitioner's request for the examiner to consider applicant's comments in the response filed Aug. 11, 2006 has already occurred with the advisory action issued by the examiner on Jan. 19, 2007. The review of the record shows that the examiner was in compliance with applicable examining practice as set forth in MPEP 706.07(a). Therefore, the amendment to the claims presented on Apr. 12, 2006 necessitated the new grounds of rejection presented in the final Office action issued on Jul. 11, 2006. The examiner's finality of the Office action is correct.

Conclusion

For the foregoing reasons, the relief requested by petitioners will not be granted. Specifically, the examiner's finality of the Office action dated Jul. 11, 2006 is proper.

The application is being forwarded to Examiner Erezo of Art Unit 3731 for further processing. 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". Any inquiry regarding this decision should be directed to Marc Jimenez, Training Quality Assurance Specialist, at (571) 272-4530.

The petition is dismissed.

Frederick R. Schmidt, Director
Technology Center 3700

JUN-26-2007 18:20 From:POWER DEL VALLE LLP 2125800325 To:USPTO P.4/4

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,422	08/15/2001	Peter Ar-Fu Lam	DISPMT1	1550

7590 03/11/2010

Peter Ar-Fu Lam
20104 Wayne Ave.
Torrance, CA 90503

EXAMINER
BUCHANAN, CHRISTOPHER R

ART UNIT	PAPER NUMBER
3627	

MAIL DATE	DELIVERY MODE
03/11/2010	PAPER

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

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

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MAR 11 2010

Peter Ar-Fu Lam
20104 Wayne Avenue
Torrance, CA 90503

In re Application of Peter Ar-Fu Lam Application No. 09/930,422 Filed: August 15, 2001 For: BODY PROFILE CODING METHOD AND APPARATUS USEFUL FOR ASSISTING USERS TO SELECT WEARING APPAREL	:	DECISION ON PETITION UNDER 37 CFR §1.181

This is a decision on applicant's communication denominated "Petition to Director - according to 37 CFR 1.181" filed February 19, 2010, which will be treated as a petition requesting supervisory review.

The petition is **GRANTED-IN-PART.**

The petition filed February 19, 2010 consists of two parts. In part A, petitioner requests "an office action that honors the right of the applicant to have the terms of claim 40 to be interpreted according to MPEP 2111.01, MPEP 2011.01 III and MPEP 2112.02." In part B, petitioner requests that the examiner provide "supporting prior art or an affidavit under 37 CFR 1.107(b) about the level of skill to take an office notice stated in lieu of a supporting prior art."

Relevant Rules and Procedures

37 CFR § 1.104 Nature of examination.

...

(b) Completeness of examiner 's action . The examiner 's action will be complete as to all matters, except that in appropriate circumstances, such as misjoinder of invention, fundamental defects in the application, and the like, the action of the examiner may be limited to such matters before further action is made. However, matters of form need not be raised by the examiner until a claim is found allowable.

(c) Rejection of claims.

(1) If the invention is not considered patentable, or not considered patentable as claimed, the claims, or those considered unpatentable will be rejected.

(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. **The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.**

MPEP 1201 [R-3] Introduction

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a *>substantive< nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. **Where the differences of opinion concern the denial of patent claims because of prior art or **>other patentability issues<, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute >(35 U.S.C. 134)<.**

MPEP 2144.03 [R-6] Reliance on Common Knowledge in the Art or "Well Known" Prior Art

...

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. **If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.** See 37 CFR 1.104(c)(2). See also Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2).

> If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate.

Discussion

As concerns part A, petitioner alleges that after repeated requests, with respect to claim 40, the examiner has repeatedly failed to clarify how the "claim limitations are interpreted and found in the prima facie prior art Spackova." Petitioner "requests an office action that honors the right of the applicant to have the terms of claim 40 to be interpreted according to MPEP 2111.01, MPEP 2111.01 III and MPEP 2112.02 as recited herein for constructing the claim limitations, then for the differences between constructed claim limitations and the prior art to be compared as directed by the Graham inquiry, and then the comparison process, reasons and results to be comprehensively expressed in an office action, clarifying and answering all the ambiguous area raised by the applicant in accordance to 37 CFR 1.104(b) and MPEP 707.07."

37 CFR 1.104(b) requires that "the examiner's action will be complete as to all matters;" however, contrary to petitioner's assertion, there is no requirement that there be an "explanation how every claim limitation, one by one is interpreted, and how the corresponding claim interpretation is exactly found in the figure and element numbers of the drawings, or located in the wording description in column and line numbers of the prior art specification." As set forth in 37 CFR 1.104(c)(2), in rejecting the claims under prior art, "the pertinence of each reference, **if not apparent**, must be clearly explained and each rejected claim specified."

A review of the final Office action mailed December 22, 2009 indicates that claim 40 is rejected under 35 USC 103(a) as being obvious over Spackova in view of Aisaka. In regards to petitioner's request for an explanation of how the claim interpretations are "exactly found in the figure and element numbers of the drawings, or located in the wording description in column and line numbers of the prior art specification," beginning on page 4 of the Office action, the examiner has set forth the scope and content of the prior art (i.e., the various claim limitations that Spackova discloses). The examiner then ascertains the differences between the claimed invention and the prior art (see bottom of page 4). The examiner then resolves the level of ordinary skill in the pertinent art for the obvious combination or modification (beginning at the first full paragraph on page 5). The test for obviousness is not whether the features of the references may be bodily incorporated into the other to produce the claimed subject matter but simply what the references make obvious to one of ordinary skill in the art. *In re* Bozek, 163 USPQ 545, (CCPA 1969); *In re* Richman 165 USPQ 509, (CCPA 1970); *In re* Beckum, 169 USPQ 47 (CCPA 1971); *In re* Sneed, 710 F.2d 1544, 218 USPQ 385.

Accordingly the examiner has provided a complete action in accordance with 37 CFR 1.104. As set forth in MPEP 1201, where the differences of opinion concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits, and thus are not petitionable. Therefore, petitioner's request for "an office action that honors the right of the applicant to have the terms of claim 40 to be interpreted according to MPEP 2111.01, MPEP 2111.01 III and MPEP 2112.02 as recited herein for constructing the claim limitations, then for the differences between constructed claim limitations and the prior art to be compared as directed by the Graham inquiry, and then the comparison process, reasons and results to be comprehensively expressed in an office action, clarifying and answering all the ambiguous area raised by the applicant in accordance to 37 CFR 1.104(b) and MPEP 707.07" is **dismissed**.

As concerns part B of the petition, petitioner requests supporting prior art for the examiner's holding of official notice. As the holding of official notice is directed to a grounds of rejection, it is not a petitionable matter. However, part B of the petition will be treated as a request for supervisory review of the final rejection and a petition to withdraw the finality of the December 22, 2009 Office action.

In the non-final office action mailed July 30, 2009, the examiner took official notice that "the features of a compressed body profile code is well-known and commonly used in the art" (claim 40) and that "data compression, decompression and manipulation are well-known in the art" (claim 52). In the response filed October 30, 2009, applicant challenged the examiner's factual assertion. In the final rejection mailed December 22, 2009, the examiner repeated the official notice, but failed to provide adequate evidence. Furthermore, the examiner stated that "a proper response to rejections made using **official notice** or design choice require the applicant to submit reasoned arguments that explain how the rejection is invalid and describe the novelty of, purpose of, and problems solved by the invention along with evidence supporting these arguments" (emphasis added).

MPEP 2144.03 clearly sets forth that to adequately traverse an examiner's official notice, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. If applicant challenges a factual assertion as not properly officially noticed or not properly based upon common knowledge, the examiner must support the finding with adequate evidence. If applicant's traverse is inadequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. If the traverse is inadequate, the examiner should include an explanation as to why it was inadequate.

Applicant has traversed the examiner's official notice. It was improper for the examiner to repeat the official notice without providing adequate evidence. Additionally, it was also improper to require the applicant to submit "reasoned arguments that explain how

the rejection is invalid and describe the novelty of, purpose of, and problems solved by the invention along with evidence supporting these arguments." Accordingly, the finality of the December 22, 2009 Office action is withdrawn.

The application will be returned to the examiner for further action commensurate with this decision.

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."

Questions concerning this decision should be referred to Teri Luu, Quality Assurance Specialist, at (571) 272-7045.

Wynn Coggins, Director
Patent Technology Center 3600
Telephone No.: (571) 272-5350

WG/tl: 03/09/10

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AUG 16 2006

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington DC 20037-3202

In re Application of:
SHIGEHARU USHIWATA et al
Serial No.: 09/930,442
Filed: Aug. 16, 2001
Docket: Q65849

Title: **CUTTER WITH LASER GENERATOR THAT IRRADIATES CUTTING POSITION ON WORKPIECE TO FACILITATE ALIGNMENT OF BLADE WITH CUTTING POSITION**

DECISION ON PETITION TO WITHDRAW FINALITY AS PREMATURE

This is a decision on the petition filed on April 21, 2006 to withdraw the finality of the Office Action of March 28, 2006.

The petition is **DISMISSED as moot**.

In his April 21, 2006 petition the applicant requested a withdrawal of the finality of the Office action on March 28, 2006. In support of his petition, the applicant argues that the September 21, 2005 amendment did not necessitate a final rejection.

The record shows that:

1) In response to the examiner's non-final Office action of June 30, 2005, on September 21, 2005, the applicant filed an amendment which cancelled claims 1-2, 4-9, 25-34, 36-37, 41-45, 47-52 and amended claims 3, 10, 11, 35, 38-40, 46. In the amendment, claims 23-24, 53-78 were unamended since they were indicated as allowable.
2) On March 28, 2006, the examiner issued a final Office Action, rejecting most of the claims including some previously indicated allowable claims under 35 U.S.C. 103, and stating that the amended claims and previously indicated allowable claims necessitated new grounds of rejection, thus making the Office Action final. In particular, the examiner relied on Stone reference that was cited in the child application by the applicant.
3) On April 21, 2006, the applicant filed the present petition to withdraw the finality of the Office Action. Specifically, the applicant argued that the examiner's final rejection would unjustly deprive applicant of at least one chance to respond to the rejection on first time rejected claims.

4) On July 27, 2006, the applicant submitted an amendment after final, which included remarks and rewrote the allowable claims in independent form without acquiescing to the examiner's final rejection.
5) In response to the applicant's amendment after final of July 27, 2006, the examiner issued a notice of allowance on Aug. 11, 2006 for the application. Specifically, the examiner found the applicant's amendment after final did place the application in condition for allowance and, therefore, the finality of that action was automatically withdrawn.

In view of the history, the relief the applicant requested, namely the withdrawal of the finality of the March 28, 2006 Office Action, has already occurred. The application has already been allowed on Aug. 11, 2006. Accordingly, the petition is dismissed as moot.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Program Examiner, at (571) 272-4856.

Frederick R. Schmidt, Director
Technology Center 3700

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WASHINGTON DC 20037-3202

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MAR 14 2007

OFFICE OF PETITIONS

In re Application of	:	
Shigeharu Ushiwata et al	:	
Application No. 09/930,442	:	DECISION GRANTING PETITION
Filed: August 16, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. Q65849	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 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 the issue fee and publication fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance of August 11, 2006, is accepted as having been unintentionally delayed.

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

This matter is being referred to Patent Publication.

Karen Creasy
Petitions Examiner
Office of Petitions

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MAIL

MAR - 9 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

GREENBERG TRAURIG, LLP
Suite 1200
1750 Tysons Boulevard
McLean, VA 22102

In re Application of:
Curtis GENEROUS, et al.
Application No. 09/930,496
Filed: August 16, 2001
For: MULTI-CHANNEL MESSAGING SYSTEM AND METHOD

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed February 16, 2005.

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 Office will continue to be directed to the above-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 Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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GREENBERG TRAURIG, LLP
Suite 1200
1750 Tysons Boulevard
McLean, VA 22102

MAIL

MAR 2 4 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Curtis GENEROUS, et al.
Application No.: 09/930,496
Filed: August 16, 2001
For: MULTI-CHANNEL MESSAGING SYSTEM AND METHOD

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed March 16, 2005.

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 Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

cc: Curtis Generous
510 Jackson Tavern Way
Great Falls, VA 22066-1153

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 6, 2006

TO SPE OF : ART UNIT 2616

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/930500 Patent No.: 6,847,618 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: Change proposed in column 30 line 64 would have misspelled word "fieds", and proposed change in column 29, line 48 would have added an additional "the" in the claim.

SPE

2616
Art Unit

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SHERIDAN ROSS P.C.
1560 Broadway
Suite 1200
Denver, CO 80202-5141

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FEB 09 2005

OFFICE OF PETITIONS

In re Application of :
Henry, et al. : DECISION ON PETITION
Application No. 09/930,503 :
Filed: August 16, 2001 :
Atty. Dkt. No.: 39245-173913 :

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed January 19, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned July 11, 2004 for failure to timely reply to the Office communication mailed June 10, 2004. The Notice set a one month shortened statutory period of time for reply. No extensions of time in accordance with 37 C.F.R. § 1.136 were timely requested. Notice of Abandonment was mailed February 4, 2005.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the Office communication is accepted as having been unintentionally delayed.

This application will be forwarded to Technology Center 1600 for further processing.

Application No. 09/930,503

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

Alesia M. Brown
Senior Petitions Attorney
Office of Petitions

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SCHWEGMAN LUNDBERG WOESSNER & KLUTH PA
P O BOX 2938
MINNEAPOLIS, MN 55402

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NOV 17 2004

OFFICE OF PETITIONS

In re Application of	:
Paul A. Farrar et al	:
Application No. 09/930,521	: DECISION GRANTING PETITION
Filed: August 15, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 303.367US2	:

This is a decision on the petition, filed November 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 January 16, 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 2812 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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SCHWEGMAN, LUNDBERG WOESSNER & KLUTH PA
P O BOX 2938
MINNEAPOLIS, MN 55402

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OFFICE OF PETITIONS

In re Application of
Paul A. Farrar et al
Application No. 09/930,521
Filed: August 15, 2001
Attorney Docket No. 303.367US2

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

This is a decision on the petition, filed November 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 January 16, 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 2812 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).*

PORTFOLIO I.P.
NOV 2 2 2004
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DOPT

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : April 27, 2006

TO SPE OF : ART UNIT 2812

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/930521 Patent No.: 6,946,389

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**.

Expedite

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: _____

SPE

2812

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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. 4

FOSTER & FOSTER, LLC
MR. LYNN G. FOSTER
600 E. 300 S.
SALT LAKE CITY, UT 84102

COPY MAILED

APR 1 4 2003

OFFICE OF PETITIONS

In re Application of	:	
LaFollette, et al.	:	
Application No. 09/930,539	:	ON PETITION
Filed: August 14, 2001	:	
Attorney Docket No. A11-17146US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 5, 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 Corrected Application Papers (Notice) mailed October 4, 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 December 5, 2001.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

The 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
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

Pet. Dec.

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Mailed: MAY 18 2004

CST

In re application of Rodney M. LaFollette et al Serial No. 09/930,539 Filed: August 14, 2001 For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	: : : : : : :	DECISION ON PETITION

This is a decision on the petition filed April 8, 2004 requesting that the above-identified application be granted Special Status under section 708.02 (V) and (VI) of the MPEP and 37 CFR 1.102(c) – no fee required.

The request for Special Status is granted because the criteria set forth in MPEP 708.02 (V) and (VI) and 37 CFR 1.102(c) has been met.

The petition is GRANTED.

Christine Tierney
Special Program Examiner, Technology Center 1700
571-272-1055

Lynn G. Foster
602 E. 300 S.
Salt Lake City UT 84102

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United States Patent and Trademark Office
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wak

Mailed: 11/17/05

In re application of	:	
LaFollette et al.	:	DECISION ON
Serial No. 09/930,539	:	PETITION
Filed: August 14, 2001	:	
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	:	

This is a response to applicant's response to notification of non-compliant appeal brief. Applicant requests that the authority of the Director of Technology 1700 be invoked. Applicant's request is being considered a PETITION UNDER RULE 37 C.F.R. 1.181(a). The petition requests that the unentered amendments be entered and to recognize that the application is correctly on appeal and the jurisdiction of the Board has been properly invoked.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee). The office issued a notice of defective appeal brief on February 16, 2005. Applicant asserts that the claims have been rejected four times and are proper for appeal. Applicant further asserts that the claims were rejected three times in application 09/037,801. The current application (09/930,539) is a continuation of application 09/037,801.

A review of the current application shows the following. A non-final rejection was mailed out on August 5, 2004. Applicant filed a response on October 14, 2004 to the non-final office action. The Office mailed applicant on October 22, 2004 a notice of informal or non-responsive amendment. Applicant attempted to remedy the situation on November 1, 2004 and November 9, 2004. A notice of non-compliant relating to both of these attempts was mailed on November 23, 2004.

Applicant filed a Notice of Appeal on November 26, 2004 and an Appeal Brief on December 6, 2004. Applicant filed an amendment rectifying the issues raised by the non-compliant notice on November 12, 2004 and was received by the office on November 15, 2004. It appears that a notice of non-compliant amendment mailed in November did not address the amendment received by the Office November 15, 2004. Applicants appeal brief appears to be based upon the amendment received by the Office on November 15, 2004.

In view of the current application being a continuation, the claims have been rejected more than two times and are proper for appeal.

The Petition is **GRANTED**.

The application is being forwarded to the Examiner for consideration of applicants amendment received November 15, 2004 and if the amendment is in compliance to then consider applicants appeal brief and to file an Examiner's answer in response to applicant's appeal brief.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Lynn G. Foster
602 East 300 South
Salt Lake City, Utah 84102

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wk

Mailed: 9/29/06

In re application of	:	
LaFollette et al.	:	DECISION ON
Serial No. 09/930,539	:	PETITION
Filed: August 14, 2001	:	
For: MICROSCOPIC BATTERIES FOR MEMS SYSTEMS	:	

This is a response to applicant's renewal of a petition under 37 C.F.R. 1.181. Applicant requests that the application be reassigned to another Examiner to insure prompt filing of the Examiner's Answer. That Jacqueline Stone supervise an expedited preparation of the Examiner's answer and that the Examiner be instructed to file with the Board of Patent Appeals and Interferences and serve on the Attorney for the Applicants the Examiners Answer within 15 days of the decision on this renewal petition.

The current application (09/930,539) is a continuation of application 09/037,801. A review of the current application shows the following. A non-final rejection was mailed out on August 5, 2004. Applicant filed a response on October 14, 2004 to the non-final office action. The Office mailed applicant on October 22, 2004 a notice of informal or non-responsive amendment. Applicant attempted to remedy the situation on November 1, 2004 and November 9, 2004. A notice of non-compliant relating to both of these attempts was mailed on November 23, 2004. Applicant filed a Notice of Appeal on November 26, 2004 and an Appeal Brief on December 6, 2004. Applicant filed an amendment rectifying the issues raised by the non-compliant notice on November 12, 2004 and was received by the office on November 15, 2004. It appears that a notice of non-compliant amendment mailed in November did not address the amendment received by the Office November 15, 2004. Applicants Appeal Brief appears to be based upon the amendment received by the Office on November 15, 2004.

The previous petition requested that the amendments be entered and to recognize that the application is correctly on appeal and the jurisdiction of the Board has been properly invoked. The application was forwarded to the Examiner for consideration of applicant's amendment received November 15, 2004 and if the amendment was in compliance, to then consider applicants Appeal Brief and to file an Examiner's Answer in response to applicant's Appeal Brief.

The amendment of November 15, 2004 was considered as per the petition decision and a communication to the applicant was mailed on April 16, 2006. The communication noted that the appeal was not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee).

The Petition is **Dismissed** in view of the indication of notice of allowance on 9/27/06

William Krynski, Special Program Examiner
Technology Center 1700
Chemical and Materials Engineering

Lynn G. Foster
602 East 300 South
Salt Lake City, Utah 84102

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JUL 16 2004

In re Application of Williams Perkins, et al. Serial No. 09/930547 Filed: August 15, 2001 For: METHOD AND APPARATUS FOR DELIVERING NATURAL GAS TO REMOTE LOCATIONS	: : : : : : :	NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b)

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.

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 Thomas Dunn (571) 272-1171.

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

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Vinson & Elkins, L.L. P.
2300 First City Tower
1001 Fannin Street
Houston, TX 77002-6760

cc: Allowed Files—Pk3-910

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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MAR 27 2003

UR
PAPER NO. 7

In re Application of	:	
Jeffrey A. Colborn	:	
Serial Number: 09/930,557	:	
Filed: August 15, 2001	:	DECISION ON
For: POWER SYSTEM INCLUDING HEAT REMOVAL	:	PETITION UNDER
UNIT FOR PROVIDING BACKUP POWER TO	:	M.P.E.P. 708.02,V
ONE OR MORE LOADS	:	& VIB

This is in response to the petition filed, August 15, 2001 requesting that the above-identified application be granted Special Status under section 708.02 (V), and alternatively under Section 708.02 (VIB) of the MPEP and 37 CFR 1.102(c) (no fee required).

The request for Special Status considered under Section 708.02 (V) is granted because criteria under 37 CFR 1.102(c) has been met.

The request for Special Status under section 708.02 (VI B) is granted because criteria under 37 CFR 1.102(c) has been met.

Accordingly the petition is GRANTED.

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

Howrey Simon Arnold & White, LLP-OC
301 Ravenswood Avenue
Box 34
Menlo Park, CA 94025

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

September 24, 2003

Eric S. Furman
Knobbe, Martens, Olson & Bear
2040 Main St.
Fourteenth Floor
Irvine, CA 92614

In re application of:
Matti Sallberg DECISION ON PETITION
Serial No.: 09/930,591
Filed: August 15, 2001
For: HEPATITUS C VIRUS NON-STRUCTURAL NS3/4A
FUSION GENE

This is a decision on the petition received on March 25, 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 December 17, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 21, 2001.

On March 25, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice of Missing Parts mailed December 17, 2001.

The evidence submitted is sufficient to establish that the petitioners never received the Notice of Missing Parts mailed December 17, 2001.

The petition is hereby Granted.

A new Notice to File Missing Parts was mailed on June 4, 2003, giving counsel 2 months from the date of the notice to respond.

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

Enclosure: 1

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Dec. 22, 2005

TO SPE OF : ART UNIT 1648 (*James Housel*)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,960,569

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.
Please see the Related U.S. Application Data, Amdt. dated 12/10/04, the Exr. Amdt, the "LET." dated 3/31/05, and claim 8/7. Your denial or approval decision is needed below.

sp Stacy Powell

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 *x120*

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

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

Comments:

At page 1, before "and provisional application No. 60/225,767" there is not "and". Therefore, this amendment can not be entered.

James C. Housel — **SPE**

1648 — **Art Unit**

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ALEXANDRIA, VA 22313-1450
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Paper No. 13

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

COPY MAILED

APR 0 8 2004

OFFICE OF PETITIONS

In re Application of	:	
H. Peter Anvin et al	:	
Application No. 09/930,625	:	NOTICE
Filed: August 15, 2001	:	
Attorney Docket No. TRANS40	:	

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 2188.

Wan Laymon

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903

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DEC 0 3 2004

OFFICE OF PETITIONS

In re Application of
Flanagin, Moore, Friedman, Serdy, and Alam
Reissue Application No.: 09/930,659
Filed: August 14, 2001
Attorney Docket No: 50037.17US01
For: METHOD AND SYSTEM FOR SYNCHRONIZING MOBLIE DEVICES

: DECISION ACCORDING
: RULE 47(a) STATUS

This is in response to the petition under 37 CFR 1.47(a), filed August 14, 2001.

The petition is **GRANTED**.

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.

The above-cited application was filed on August 14, 2001, and was accompanied by a declaration executed by all named inventors, except inventor Friedman. A petition under 37 CFR 1.47 was also filed on August 14, 2001, indicating that inventor Friedman expressly refused to execute the declaration for the application.

Petitioner has shown that inventor Friedman has expressly refused accept the application papers for review and had refused to join the above-identified reissue 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 addresses given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Greg Friedman
22930 NE 12th Place
Sammamish, WA 98074

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DEC 03 2004

OFFICE OF PETITIONS

In re Application of :
Flanagin, Moore, Friedman, Serdy, and Alam :
Application No. 09/930,659 : LETTER
Filed: August 14, 2001 :
Attorney Docket No. 50037.17US01 :
For: METHOD AND SYSTEM FOR SYNCHRONIZING MOBILE DEVICES

Dear Mr. Friedman:

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 joint 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. It should be further noted that any assignee of record of the entire interest in the application may request that the inventor(s) be excluded from access to the application. If the request is granted, you will be informed of that fact and will only be permitted to inspect the application on sufficient showing of why such inspection is necessary to conserve your rights. See *MPEP* 106, citing, *In re The Kellog Switchboard & Supply Company*, 1906 C.D. 274 (Comm'r Pat. 1906).

Telephone inquiries regarding this communication should be directed to Petitions Attorney Kenya A. McLaughlin at (571) 272-3222. 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).

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Merchant & Gould P.C.
P.O. Box 2903
Minneapolis, MN 55402-0903

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Paper No. 4

FULBRIGHT & JAWORSKI L.L.P.
R. Ross Viguet
Suite 2800
2200 Ross Avenue
Dallas TX 75201

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DEC 03 2001

OFFICE OF PETITIONS

In re Application of	:	
Gordon et al.	:	
Application No. 09/930,662	:	DECISION GRANTING
Filed: August 15, 2001	:	PETITION
Attorney Docket No.	:	
47586/P055US/10025093	:	

This is a decision on the petition filed September 28, 2001, to accord the above-identified application a filing date of August 15, 2001.

On August 15, 2001, the application was filed.

On September 24, 2001, the Office of Initial Patent Examination mailed a Notice stating that drawings were not present and that a filing date had not been accorded and the filing date would be the date of receipt of drawings.

In response, the present petition was filed alleging that drawings were deposited on August 15, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "Drawings (3 pages)" on August 15, 2001.[1] Petitioner has also submitted a copy of the missing documentation- three pages of drawings.

Upon review of the record, the drawings, deposited on August 15, 2001, have not been located. However, the evidence is convincing that the application papers deposited on August 15, 2001,included three sheets of drawings, and that the drawings were subsequently misplaced in the PTO. Therefore, the application is complete and entitled to a filing date of August 15, 2001.

In view of the above, the petition is **granted**. The copy of the three pages of drawings submitted with the petition will be used for examination purposes.

The petition fee will be scheduled to be refunded.

---

[1] Evidence of receipt of any correspondence filed in the Patent and Trademark Office can be obtained by submitting a self addressed post card properly itemizing and identifying the paper or papers being filed. Upon receipt of the correspondence, the Patent and Trademark Office will check the listing on the post card against the papers submitted, making sure that all items listed are present and will then stamp the postcard with an Official date stamp and place the post card in the outgoing mail. "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all items listed thereon by the PTO." M.P.E.P. § 503.

The Notice mailed September 24, 2001, was sent in error and is hereby vacated.

In the future, petitioner should note that when a new application is being filed, all parts of the application being submitted should be separately listed on the postcard, e.g., the number of pages of specification (including written description, claims and abstract), number of claims, number of sheets of drawings, and number of pages of oath/declaration. The instant postcard does not provide the number of pages of specification, number of claims, or number of pages of oath/declaration.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of August 15, 2001, using the application papers filed on August 15, 2001, and the copy of three sheets of drawings filed on September 28, 2001.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. 5

#6

Robert C. Freed
MOORE & HANSEN
2900 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402

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MAR 0 6 2002

OFFICE OF PETITIONS

In re Application of :
Schmeichel, et al. :
Application No. 09/930,680 :
Filed: August 14, 2001 :
Attorney Docket No. A20-009-01-US :

DECISION ON PETITION

This is a decision on the "Petition for Corrected Filing Date under 37 CFR Section 1.10(d)," filed January 23, 2002 (certificate of mailing December 14, 2001), requesting that the above-identified application be accorded a filing date of August 14, 2001, rather than the presently accorded filing date of August 16, 2001.

The petition is **GRANTED**.

Petitioner maintains that the above-identified application was mailed to the U.S. Patent and Trademark Office (USPTO) by Express Mail on August 14, 2001, and although United States Postal Service (USPS) records indicate that it was received by the USPS on August 14, 2001, the "date-in" marking on the "Express Mail" mailing label was omitted by the USPS. Petitioner respectfully requests correction of the filing receipt to accord the application with the filing date when the application was received by the USPS, August 14, 2001. In support, petitioner submitted *inter alia*:

- an affidavit of legal secretary Susan J. Anderson, detailing a status inquiry made to the USPS in which she was told that the Express Mail item "was accepted or we picked it up on August 14, 2001, at 11:59 pm;"
- a copy of their filing receipt mailed September 21, 2001, and received in counsel's Office on September 24, 2001;
- a "true" copy of the United States Postal Service "Post Office to Addressee" "Express Mail" mailing label, EL850930164US, with the "date-in" omitted;
- a "true" copy of the application transmittal, bearing the appropriate "Express Mail" No. EL850930164US; and
- a "true" copy of the relevant page of petitioner's "Express Mail Deposit Log," with the following headings: date, time, initials, file No., Express Mail No., App Serial No., Client Name, Drop Box Location, Deposit Date, Time of Deposit, and Time of Last Pickup.

Preliminarily, it is concluded that the petition was filed promptly after petitioner received notice by way of filing receipt that the Office had accorded a filing date of August 16, 2001. (It is noted that upon receipt of an Express Mail label with the date-in omitted, petitioner promptly began investigating with the USPS as to the date of acceptance of the package, confirming a date-in of August 14, 2001). The evidence of record further shows that the number of the "Express Mail" mailing label, EL850930164US, is on the correspondence of record presently accorded a filing date of August 16, 2001, and thus, was placed on the correspondence prior to the original mailing.

Finally, petitioner has made a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. This showing is not corroborated by petitioner's "Express Mail Deposit Log." This log is very persuasive except it does not include an entry that establishes that the log entry came into being after and within 1 business day of the "3:10" pm deposit. (Petitioner may wish to consider amending the log accordingly.) Nonetheless, the USPTO's USPS Express Mail Information Database corroborates that the "Express Mail" package was accepted at 11:59 pm on August 14, 2001 (copy of database record enclosed).

Having considered the evidence, it is concluded that petitioner has shown that the "date-in" on the "Express Mail" mailing label was omitted by the USPS, and that the requested filing date, August 14, 2001, is the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup of the day. The proper date to be accorded this application is August 14, 2001, not August 16, 2001.

The petition fee has been refunded to Deposit Account No. 13-4300, as authorized.

The application is being returned to the Office of Initial Patent Examination for further processing including **correction of the filing date to August 14, 2001**, and mailing of a corrected filing receipt.

Telephone inquiries specific to this matter may 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

Encl: Copy of USPTO USPS Express Mail Printout (Paper No. 4).

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MOORE, HANSEN & SUMNER, PLLP
225 SOUTH SIXTH ST
MINNEAPOLIS MN 55402

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OFFICE OF PETITIONS

In re Application of
Schmeichel et al.
Application No. 09/930,680
Filed: August 14, 2001
Attorney Dck't. No. A20-009-01

: DECISION ON PETITION
: AND RETURN
: OF THIRD PARTY PAPERS

This is a decision on the petition filed October 12, 2004, by a third party requesting suspension of the rules under 37 CFR 1.183 such that the concurrently filed protest containing an IDS may be considered by the examiner.

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

Petitioner asserts that it is involved in litigation with the assignee of the above-captioned application and seeks waiver of the requirement that a protest be filed before publication of an application.

37 CFR 1.291(a) provides in pertinent part that "[a] protest specifically identifying the application to which the protest is directed will be entered in the application file if:

> (1) The protest is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first..."

Since the above-identified application was published July 25, 2002, as publication No, US20020096910A1, over two years prior to the filing of the instant protest, the instant protest will not be entered into the file in the absence of waiver of the rules.

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

Third party petitioner is reminded that, by its terms, 37 CFR 1.183 may not be invoked to operate to the contrary of any law. In this instance, attention is directed to 35 U.S.C. § 121(c) which provides that:

> 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.

As inspection of the protest fails to reveal that third party petitioner has obtained the express written consent of the applicant in this matter, and as this latter requirement is a requirement of law, it is beyond the control or the delegated authority of the USPTO in this instance to further contemplate waiver of the timing requirement of the regulation, for to do so would disregard the above-quoted statutory requirement for belated consideration of a protest in, as here, a published application. Since the USPTO is an executive branch agency, it must follow the strict provisions of the applicable statute. See A.F. Stoddard v. Dann, 564 F.2d 556, 566, 195 USPQ 97, 105 (D.C. Cir 1977). That is, the USPTO simply lacks the authority or the discretion to relax any requirement of law. See Baxter Int'l, Inc. v. McGaw, Inc., 149 F.3d 1321, 1334, 47 USPQ2d 1225, 1234-1235 (Fed. Cir. 1998)(the PTO cannot, by rule, or waiver of the rules, fashion a remedy that contravenes 35 U.S.C. §§ 112, 120); A.F. Stoddard v. Dann, Id.

Since the rules will not be waived in this instance and as such the untimely protest is not properly entered in the file, it is being returned herewith.

The $130 fee for a petition under 37 CFR 1.183 has been charged to petitioner's deposit account. The fee was owed regardless of the outcome of the decision.

On a one time basis, a courtesy copy of this decision is being mailed to counsel who, albeit not of record, filed the petition, notwithstanding the USPTO requirement that once a protest has been filed the USPTO will not further communicate with the third party.

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

Brian Hearn

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

cc:

Robert Herberger
500 City Center One
PO BOX 507
Youngstown Ohio 44501

Enclosure for cc: papers filed October 12, 2004

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Paper No. 5

McDonnell Boehnen Hulbert & Berghoff
32nd Floor
300 S. Wacker Drive
Chicago, IL 60606

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OFFICE OF PETITIONS

In re Application of
Nguyen, et al.
Application No.: 09/930,694
Filed: August 15, 2001
Attorney Docket No.: 01-182

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137(b)

This is in response to the "Petition to Revive under 37 CFR 1.137(b)" filed May 16, 2003.

The petition is granted.

The petition includes a copy of the "Request to Rescind Previous Nonpublication Request," signed July 29, 2002, and received by the Office on August 5, 2002. Petitioner argues that the request to rescind should be treated as a notification of foreign filing in which case the application would not be abandoned. Petitioner further argues that the filing of an international application in the PCT Receiving Office should be construed as sufficient notice to the Director of the filing of foreign application. In the alternative, petitioner requests that the petition be treated under 37 CFR 1.137(b).

Title 35, Section 122(b)(2)(b) of the United States Code provides:

> (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 shall not be published as provide 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 multi-lateral international agreement specified in clause (i), an 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.

Title 37, Section 1.213 of the Code of Federal Regulations implements the provisions of 35 U.S.C 122(b)(2)(B).

Most patent applications filed on, or after, November 29, 2000, will be published, unless applicant files a request for nonpublication in compliance with 37 CFR 1.213(a). A nonpublication request is required to contain a certification that "the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement that requires publication at eighteen months after filing." Applicants who do not plan to file in another country are not required to file such a certification, and given that provisional rights may be available to those who have their patent applications published, some applicants who do not plan to file in another country may elect to

have their applicant published to be eligible for provisional rights. As a result, the filing of a recision of a nonpublication request does not imply that the invention has bee, or will be, file din another country, and instead suggests that the applicant now desires to have the application published in the United States.

Further, 35 U.S.C. 122(b)(2)(B)(ii) addresses recission. If all rescissions provided notice of foreign filing, then 35 U.S.C. 122(b)(2)(B)(ii), which requires applicants to provide notice of foreign filing within a set time period, would have provided that the "recession specified in clause (ii) must be filed no later than 45 days after the date of foreign filing." Instead, clause (iii) merely specified that "applicant who has made a request under clause (i) . . . shall notify the Director if such filing no later than 45 days after the date of such filing" and does not itself require such an applicant to rescind the nonpublication request. Implicit in providing notice of foreign filing a recession of the nonpublication request, but not *vice versa*. Thus, the statute clearly identifies recission of the nonpublication request and notification of a foreign filing as two separate acts, and a rescission alone cannot be construed as notice of foreign filing.

Petitioner's arguments that no specific notice is required an that filing of an international application in the United States receiving Office was a notification of foreign filing are similarly not persuasive. Title 37, Section 1.213(c) of the Code of Federal regulations requires the applicant to provide notice, and 37 CFR 1.4(b) provides that each applicant must be complete in itself. An international application would not be placed into the file of application that it relies upon for the benefit of an earlier filing date, ans so petitioner was required to file a separate paper pursuant to 37 CFR 1.4(b) in the above-identified applicant. Accordingly, the mere filing of a PCT application is not the notification required by 35 U.S.C. 122(b)(2)(B)(ii) 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 section 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 notification of foreign filing was required to be on a separate paper from another matter (such as a new application). Thus, filing a copy of the international application in the above-identified application would not have been notice of foreign filing.

On July 30, 2002, a PCT application No. PCT/US02/24005 was filed. A review of the content of the above-cited application did not reveal a notification of the filing of the PCT application, other than that filed with the instant petition. As a result of petitioner's failure to provide timely notice of the filing of the PCT application, the above-identified application is abandoned.

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

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

See 37 CFR 1.137(b) and (f).

The statement in the instant petition "[a]pplicant hereby states that the entire delay in notifying the Office as in the Notice at Tab A of the international filing until the filing of this petition was unintentional" will be construed as meaning that "the entire delay in filing the required reply [the notification of the filing of the PCT application] 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 U.S.C. 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

The rules and statutory provisions governing the operations of the U.S. patent and Trademark Office require payment of a fee on filing each petition. See 35 U.S.C. 41(a)(7). Accordingly, as authorized, the required $1,300.00 petition has been charged to deposit account 13-2490.

Any inquiries concerning this decision may be addressed to the undersigned at (703)305-0010.

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

Kenya McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosue: Corrrected Filing Receipt

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Paper No. 3

Josephine Young
KING & SPALDING
191 Peachtree Street, N.E., 45th Floor
Atlanta, GA 30303

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:)
Christopher J. Hillar, Christopher W. Priebe)
Application No. 09/930,695) **DECISION ON REQUEST FOR**
Filed: August 15, 2001) **WITHDRAWAL AS ATTORNEY**
For: SYSTEM AND METHOD FOR)
CREATING CUSTOMIZED WEB
PAGES

This is a decision on the Request To Withdraw from Representation filed September 4, 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 September 4, 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 and Software
(703) 305-9750

cc: Forward all correspondence to the above address

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OFFICE OF PETITIONS

Paper No.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER
1300 I STREET, NW
WASHINGTON DC 20005

In re Application of :
Hao Chen et al :
Application No. 09/930,705 : ON PETITION
Filed: June 29, 2001 :
Attorney Docket No. 3063.0398-01 :

This is a decision on the petition, filed February 6, 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 1774 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).

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Paper No. _____

Date : February 6, 2004

TO : Director, Office of Publication and Dissemination

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : Hao Chen et al
Application No. : 09/930,705
Filed : June 29, 2001

The above-identified application has been assigned Patent No. 6,689,484 and an issue date of February 10, 2004.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of February 10, 2004:

> "All reference to Patent No. 6,689,484 to Hao Chen et al of Pennsylvania for SURFACE COVERINGS CONTAINING ALUMINUM OXIDE appearing in the Official Gazette of February 10, 2004 should be deleted since no patent was granted."

Karen Creasy

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

cc: Geraldine Dozier, Crystal Park 3-441 (FAX-306-2737)
Deneise Boyd, Crystal Park 2, Suite 1100 (FAX-308-5413)
Mary Louise McAskill, Crystal Park 3-910 (FAX 305-4372)
Niomi Farmer, Crystal Park 3-910 (FAX-305-4372)
Mary E. Johnson (Cookie), P/OCS, CM1-6D07
Duane Davis, P/OCS, CM1-6A07
Tamara Greene, Crystal Park 3-908

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www.uspto.gov

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD CT 06905

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OFFICE OF PETITIONS

In re Application of	:
Packes, et al.	:
Application No. 09/930,717	: DECISION ACCORDING STATUS
Filed: August 15, 2001	: UNDER 37 CFR 1.47(a)
Attorney Docket No. 00-065	:
For: SYSTEM AND METHOD FOR	:
AUTOMATED PLAY OF LOTTERY GAMES	

This decision is in response to the petition under 37 CFR 1.47(a), filed January 11, 2002.

The petition is granted.

Petitioners have shown that the non-signing inventors, John Packes, Jr., Michael Steib, and Andrew Golden, have constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declarations/statement of facts of several Walker Digital employees establish that the non-signing inventors would not cooperate. Senior Patent Paralegal Veronkia Leliever states that she successfully mailed the inventors the application papers, including the specification, claims and drawings and that during a November 16, 2001 telephone conversation with Inventor Steib that he shared his belief that the assignment agreement to Walker Digital was not valid. Paralegal Michael Brinton left messages at the last known telephone numbers for the non-signing inventors, but none, including Mr. Golden, returned calls. James Jorasch, Vice President of Research and Development states that Mr. Packes on multiple occasions agreed to stop by his former employer's office to sign papers, but failed to do so over more than a 3 month period. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64, the petition fee, and a statement of the last known addresses for the non-signing inventors.

This 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. Notice of the filing of this application will

also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to Publications Division.

Telephone inquiries should 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

Robert C. Ryan
Nath and Associates PLLC
1030 15th St. , N.W., 6th Floor
Washington DC 20005

MAIL

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
Carrel W. EWING, et al.
Application No. 09/930,780
Filed: August 15, 2001
For: VERTICAL-MOUNT ELECTRICAL POWER DISTRIBUTION PLUGSTRIP

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition under 37 C.F.R. § 1.102(c) and M.P.E.P. § 708.02, Section IV: Applicant's Age, filed February 14, 2005 to make the above-identified application special.

A grantable petition to make special under 37 C.F.R. § 1.102(c) and in accordance with M.P.E.P. § 708.02, Section IV must include a showing, as by a birth certificate or the applicant's statement, that the applicant is sixty five (65) years of age or more. No fee is required for this petition.

The petition includes a statement that the applicant, Carrel W. Ewing, is over sixty five (65) years of age.

Accordingly, the petition is GRANTED. The application is being forwarded to the examiner for expedite prosecution.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security
571-272-3613

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 17

STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000
PRINCETON NJ 08543-4000

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MAR 1 2 2003

OFFICE OF PETITIONS

In re Application of
He, et al.
Application No. 09/930,782
Filed: 16 August, 2001
Attorney Docket No. BMS-0826/EM-6864F

: DECISION GRANTING PETITION

This is a decision on the petitions filed on 24 February, 2003 (supplemented via FAX on 10 March, 2003):

- under 37 C.F.R. §1.53, to correct the filing date to 16 August, 2001;
- under 37 C.F.R. §1.59 to expunge an document submitted "in error," which "can only serve as a point of confusion."

NOTE: The Associate Power of Attorney filed by Petitioner hereby is acknowledged and accepted. However, it is noted that while Petitioner is authorized to act on behalf of the Applicants, the Applicants also instruct the Office to maintain their former mailing address.

The petition:

- under 37 C.F.R. §1.53 is **DISMISSED**; and
- under 37 C.F.R. §1.59 is **DISMISSED as moot**.

Under the provisions of 37 C.F.R. §1.53, Petitioner seeks to:

- correct the a filing date for the instant application to 16 August, 2001;
- obtain a filing date of 16 August, 2001, for page 107 of the specification.

Under the provisions of 37 C.F.R. §1.59, Petitioner seeks to expunge a declaration made by former Counsel as to election of a filing date under 37 C.F.R. §1.182 and §1.53.

A review of the file of the instant application and of Office records thereof indicate that the filing date of record is 16 August, 2001.

Further, this application was deposited on 16 August, 2001.[1] However, on 17 September, 2001, the Office mailed a "Notice of Omitted Items in a Nonprovisional Application (Filed Under 37 C.F.R. §1.53(b)" in this Nonprovisional application, stating that the application had been accorded a filing date, and advising applicants that the application was deposited without page 107 of the specification (description and claims).

Former Counsel responded on 3 January with a petition fee, a declaration and a copy of the page in question (specification and claims), however, the matter seems otherwise to have remain unaddressed until this time. We will return to this matter below.

On 24 February, 2003, Petitioner filed the instant petition with a copy of the page Petitioner identifies a page 107 (specification and claims) and seeks to obtain a 16 August, 2001, for the document stating that:

- "the *** Utility Patent Application Transmittal (PTO/SB/05 (03-01)) for the instant application states that the application is a divisional of U.S.. Application Serial No. 09/014,734, and that 'The entire disclosure of the prior application, for which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying or divisional application and is hereby incorporated by reference. This reference can only be relied upon when a portion has been inadvertently omitted from the submitted application parts'"; and

- therefore, page 107 (specification and claims) of the application satisfies the requirements of 37 C.F.R. §1.53 and should be accorded a filing date of 16 August, 2001.

The mailing of a "Notice of Omitted Items in a Nonprovisional Application" (filing date granted)" permits the applicant either:

> (1) to establish promptly prior receipt in the PTO of the page (specification and claims) at issue (generally by way of a date-stamped postcard receipt (MPEP §503)), or
>
> (2) promptly submit the omitted page (specification and claims) in a nonprovisional application and accept the date of such submission as the application filing date.

---

[1] The Utility Patent Application Transmittal page reflects a date of 15 August, 2001, and a (partial) US Postal Service (USPS) Express Mail Label No. EL 781 890 961 (sic), however there are no supporting documents in evidence such as the customer copy of the USPS Express Mail form, USPS paper tape receipt or an Office date-stamped receipt card as described in the commentary at MPEP §503. Therefore the Office receipt date of 16 August, 2001, controls.

An applicant asserting that the missing page (specification and claims) was in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit.

An applicant desiring to submit the omitted page (specification and claims) in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted page (specification and claims) with an oath or declaration in compliance with 37 C.F.R. §1.63 and 1.64 referring to such drawing(s) and a petition under 37 C.F.R. §1.182 (with the petition fee under 37 C.F.R. §1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items in a Nonprovisional Application" (filing date granted) (See: 37 C.F.R. §1.181(f)).

In this case, the matter is somewhat confused:

- while original Counsel declared that it was his appreciation that the application had been filed without page 107 (specification and claims), then submitted the document and requested a filing date consistent with the later submission, he clearly was in error as to the facts of the original filing--in particular in light of the incorporation by reference; and

- Petitioner now neither asserts that the missing page (specification and claims) was deposited on 16 August, 2001, nor requests that the missing page (specification and claims) be accorded as a filing date the date on which the it was filed (3 January, 2002, despite it's reflected 16 November, 2001, execution date).

Rather, Petitioner (as Applicant(s)) seeks to amend the application to include the page of specification and claims. However, no petition under 37 C.F.R. §1.182 is necessary for that purpose.

Amendments to the specification may be entered by the primary examiner without petition so long as the amendment contains no new matter.[2]

Accordingly, the petition is inappropriate and subject to **dismissal**.

As the 24 February, 2003, petition (with it's forerunner of 3 January, 2002) was not due to an error on the part of the Office, the petition fee submitted with it will not be refunded.

It is noted that the application transmittal letter identified this application as a divisional of prior application No. 09/014,734 and specifically incorporated by reference the disclosure of the prior

---

[2] See: 37 C.F.R. 1.121(b).

application.[3] Obviously, in view of the incorporation by reference of the prior application, the page 107 (specification and claims) is not new matter if it was a part of the disclosure of the prior application.

The application previously has received from the Office of Initial Patent Examination processing with a filing date of 16 August, 2001, using the application papers filed on that date.

As indicated above, Petitioner seeks to have expunged under 37 C.F.R. §1.59 the 3 January, 2002, declaration of prior Counsel.

Generally, expungement questions are not ripe for determination at this stage of prosecution,[4] and in such contexts a petition might be dismissed without prejudice subject to Petitioner's raising it at the proper time upon the filing a renewed petition (and fee).

Here the declaration contains an obvious error in that it fails to reflect the record fact that the instant application incorporated by reference the disclosure of its parent. However, the Office already has appreciated the error of former Counsel and, as indicated above, found it proper to designate the filing date as 16 August, 2001.

Therefore, the petition under 37 C.F.R. §1.59 is **dismissed as moot**.

The application is being forwarded to Technology Center 1600 for consideration by the Examiner of the petition filed on 24 February, 2003, as an amendment requesting the entry of the page 107 (specification and claims)[5] with the specification and consideration of the relevancy to patentability of the declaration by former Counsel.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)305-9199.

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

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[3] MPEP §201.06© provides that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

[4] The "showing" requirements of MPEP §724.05 II (A-E) and "timing" requirements of MPEP §724.06, call for a determination by the Examiner as to the relevancy to patentability and a request made after allowance but before issue, respectively.

[5] See: Fn. 1, above.

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508 SECOND STREET
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DAVIS, CA 95616

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In re Application of	:	
Gordon James Yorke	:	
Application No. 09/930,800	:	NOTICE
Filed: August 15, 2001	:	
Attorney Docket No. WBG01-1833	:	

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 2171.

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
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Paper No.

MAILED

FEB 0 1 2006

TECHNOLOGY CENTER 2100

Michael Hetherington
P.O. Box 61047
Palo Alto, CA 94306

In re Application of:
Edgardo Gerck
Application No. 09/930,805
Filed: August 15, 2001
For: AUTOMATICALLY GENERATING UNIQUE, ONE-WAY COMPACT AND MNEMONIC VOTER CREDENTIALS THAT SUPPORT PRIVACY AND SECUIRTY SERVICES

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed January 18, 2006 and supplemental to the request of October 18, 2005.

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. э 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. э 402.06. 37 C.F.R. э 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed January 18, 2006 and supplemental to October 18, 2005 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

JM Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3613

cc: Dr. Edgardo Gerck
1001 D Street
San Rafeal, CA 94901

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

December 31, 2003

Robert C. Colwell
Townsend and Townsend and Crew
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

In re application of:
Norio Chujo, et al DECISION ON PETITION
Serial No.: 09/745,522
Filed: August 15, 2001
For: OPTICAL MODULES AND METHODS OF MAKING THE OPTICAL MODULES

This is a decision on the petition received on November 13, 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 of Missing Parts of Application mailed September 25, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned November 27, 2001. The notice of abandonment was mailed on October 10, 2003.

On November 13, 2003, 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 January 24, 2002.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice of Missing Parts on January 24, 2002.

The petition is hereby Granted.

The application has been completed for release to Technology Center 2872.

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

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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TOWNSEND AND TOWNSEND AND CREW
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

COPY MAILED

MAR 1 0 2005

OFFICE OF PETITIONS

In re Application of	:	
Norio Chujo et al	:	
Application No. 09/930,806	:	ON PETITION
Filed: August 15, 2001	:	
Attorney Docket No. 16869N-031100US	:	

This is a decision on the petition, filed March 9, 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 January 7, 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 2878 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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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

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DEC 0 6 2004

OFFICE OF PETITIONS

In re Application of :
Robert D. Norman, et al. :
Application No. 09/930,828 :
Filed: August 15, 2001 :
Attorney Docket No. 2222.1480000 :

ON PETITION

This is a decision on the petition, filed October 15, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The above-identified application became abandoned for failure to respond in a timely manner to the Notice of Allowance/Allowability mailed July 7, 2004, which set a statutory period for reply of three (3) months. Receipt is acknowledged of the response filed October 15, 2004.

The petition is GRANTED.

The application is being forwarded to the Office of Publications to oversee the review of the drawings filed October 15, 2004.

Telephone inquires related to this decision may be directed to the undersigned at (571) 272-3204. Status inquires related to processing at Publishing Division should be directed to (703) 305-8283.

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
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Paper No.

Jeffrey Brill
FENWICK & WEST LLP
SILICON VALLEY CENTER
801 California Street
Mountain View, CA 94041

MAILED

MAR 11 2005

Technology Center 2100

In re Application of:
Paul C. Kocher
Application No. 09/930,836
Filed: August 15, 2001
For: CRYPTOGRAPHIC COMPUTATION USING MASKING TO PREVENT DIFFERENTIAL POWER ANALYSIS AND OTHER ATTACKS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed June 04, 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 filed June 04, 2004 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

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3613

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
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Alexandria, VA 22313-1450
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EDWARD J. RADLO
SONNENSCHIEN NATH & ROSENTHAL
685 MARKET STREET, 6TH FLOOR
SAN FRANCISCO CA 94105

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OFFICE OF PETITIONS

In re Application of	:	
Paul C. Kocher et al	:	
Application No. 09/930,836	:	ON PETITION
Filed: August 15, 2001	:	
Attorney Docket No. 028420-0013CON	:	

This is a decision on the petition, filed December 29, 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 October 21, 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 2132 will consider the request for continued examination under 37 CFR 1.114.

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).

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SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, SEARS TOWER
CHICAGO IL 60606-1080

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In re Application of	:	
KOCHER et al.	:	
Application No. 09/930,836	:	DECISION ON PETITION
Filed: 08/15/2001	:	
Attorney Docket No. 44424162-8724	:	

This is a decision on the petition under 37 CFR 1.181 (no fee), filed September 22, 2008, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue fee on or before July 7, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed April 4, 2008. On September 3, 2008, the Office mailed a Notice of Abandonment.

Petitioner asserts that petitioner did not receive the Notice of Allowance and Fee(s) Due.

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

As stated in Section 711.03(c)(I)(A) of the Manual for Patent Examining Procedure:

> 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).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner submitted redacted copies of a mail log and docket report where the Notice of Allowance and Fee(s) Due would have been entered had it been received and docketed. Additionally, the practitioner attested to the fact that a search of the records indicated that the Notice was not received at the correspondence address of record. Lastly, the practitioner outlined the firm's procedures for handling incoming correspondence from the USPTO.

In view of the above, the holding of abandonment is withdrawn and the application is restored to pending status. No petition fee is required.

This application is being referred to the Technology Center AU 2132 technical support staff for re-mailing the Notice of Allowance and Fee(s) Due of April 4, 2008. The period for paying the issue fee will be reset to expire three (3) months from the date the Notice is re-mailed. This period is not extendable under the provisions of 37 CFR 1.136.

Telephone inquiries regarding this decision 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

UNITED STATES DEPARTMENT OF COMMERCE
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GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

Mail Date: 04/20/2010

Applicant	: Paul C. Kocher	: DECISION ON REQUEST FOR
Patent Number	: 7668310	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/930,836	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/15/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **980** 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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Paper No. 18

Thomas B. Haverstock
Haverstock & Owens, LLP
260 Sheridan Avenue
Suite 420
Palo Alto, CA 94306

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JUN 2 6 2003

OFFICE OF PETITIONS

In re Application of	:	
David T. Amm, et al.	:	
Application No. 09/930,838	:	DECISION GRANTING PETITION
Filed: August 15, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. SLM-06400	:	

This is a decision on the petition filed June 6, 2003, under 37 CFR 1.137(f) which is being treated under the unintentional provisions of 37 CFR 1.137(b), to revive the instant nonprovisional application.

The petition is **DISMISSED AS MOOT**.

If an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made. In the instant application, a notice to rescind was filed prior to the filing date of the foreign filing. See 35 U.S.C. § 122(b)(2)(B)(ii)

In view thereof, the petition fee of $1300 will be credited to petitioner's deposit account as authorized.

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

This application is being forwarded to Technology Center Art Unit 2872 for examination in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 19

Haverstock & Owens, LLP
162 North Wolfe Road
Sunnyvale, CA 94086

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OCT 3 0 2003

OFFICE OF PETITIONS

In re Application of	:	
David T. Amm, et al.	:	
Application No. 09/930,838	:	DECISION GRANTING PETITION
Filed: August 15, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. SLM-06400	:	

CORRECTED DECISION

This is a corrected decision on the petition filed June 6, 2003, under 37 CFR 1.137(f) which is being treated under the unintentional provisions of 37 CFR 1.137(b), to revive the instant nonprovisional application.

The decision previously mailed on June 26, 2003 was inadvertently sent to an incorrect address. The Office apologizes for any inconvenience caused to petitioner. A copy of the earlier decision is attached herewith.

The petition is **DISMISSED AS MOOT**.

If an applicant makes a nonpublication request and then rescinds the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made. In the instant application, a notice to rescind was filed prior to the filing date of the foreign filing. See 35 U.S.C. § 122(b)(2)(B)(ii)

In view thereof, the petition fee of $1300 will be credited to petitioner's deposit account as authorized.

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

This application is being forwarded to Technology Center Art Unit 2872 for examination in due course.

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

Attachment: Copy of Decision Mailed June 26, 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 08182004
AUG 20 2004

In re Patent No. 6,768,850	:	
Issue Date: July 27, 2004	:	**DECISION GRANTING**
Appl No.: 09/930,929	:	**PETITION**
Filed: August 16, 2001	:	*37 CFR 1.324*
For: METHOD OF TRIMMING A WAVEGUIDE AND APPARATUS FORMED OF THE SAME	:	

This is a decision on the petition under 37 CFR 1.48, filed September 9, 2003. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

Lynn D. Feild
Supervisory Patent Examiner
Art Unit 2835
Patent Examining Group 2800

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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HAYNES AND BOONE, LLP
901 MAIN STREET, SUITE 3100
DALLAS, TX 75202

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OFFICE OF PETITIONS

In re Application of	:	
Lee et al.	:	
Application No. 09/931088	:	DECISION ON
Filing or 371(c) Date: 08/15/2001	:	PETITION
Attorney Docket Number: 3981-6	:	

This is a decision in response to the petition under 37 CFR 1.137(a), filed September 11, 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 Notice of Non-Compliant Amendment (hereinafter "Notice"), mailed February 13, 2006. The Notice set one (1) month period for reply. No response having been received, the application became abandoned on March 14, 2006. A Notice of Abandonment was mailed September 5, 2006.

Applicant files the instant petition wherein Applicant avers that he did not receive the Notice.

Applicant has demonstrated by a preponderance of the evidence that the Notice was not received. Accordingly, the petition is granted.

The application will be referred to Technology Center Art Unit 2137 for re-mailing of the Notice and re-setting the period for reply.

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
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Frank Chau
F. CHAU & ASSOCIATES, LLP
Suite 501
1900 Hempstead Turnpike
East Meadow, NY 11554

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DEC 2 0 2005
OFFICE OF PETITIONS

In re Application of	:
Rooney, et al.	: LETTER REGARDING PTA AND
Application No. 09/931,125	: CERTIFICATE OF CORRECTION
Filed: August 16, 2001	:
Atty. Dkt. No.: 01 P 14516	:
(8055-26)	:

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed September 12, 2005. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The Determination of Patent Term Adjustment mailed June 14, 2005 indicated that the above-identified application was entitled to a patent term adjustment ("PTA") of 522 days. Applicants, however, indicate that as a result of the application being subject to a terminal disclaim, the application is not entitled to any PTA.

The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 CFR § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer.

Accordingly, at the time of allowance, the application is entitled to an adjustment of 522 days, subject to any terminal disclaimers that have been filed.

As applicants are advising us of a potential error in providing too much patent term adjustment in this application, no fee is due in connection to this matter.

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

This application is being forward to the Publications Division for issuance of patent. Any delays in issuing the patent pursuant to 37 CFR 1.702(a)(4) or 1.702(b) will be reflected in the issue notification letter that is mailed to applicants approximately three weeks prior to the patent issue date.

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

Kery Fries

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

CC: JOHN G. RAUCH
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700.

JUL 2 7 2004 rvk

Mailed:_____ Paper Number:_____

In re application of :
Siegfried Schelinski : DECISION ON
Serial No. 09/931,126 : PETITION
Filed: August 16, 2001 :
For: POROUS SILICATE GRANULAR MATERIAL AND METHOD FOR PRODUCING IT :

This is a response to the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT", filed February 27, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of February 05, 2004, for failure to timely file a proper response to the Office letter dated July 08, 2003 be withdrawn. The petitioner asserts that applicant timely filed a proper response and a Petition for Extension of Time to the Office letter of July 08, 2003 on November 07, 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 applicant did file the proper response to the Office letter of July 08, 2003 in a timely manner. The evidence provided includes : 1) a copy of the Amendment in response to the Office letter of July 08, 2003 and Petition for a one-month Extension of Time with an executed Certificate of Mailing on November 07, 2003; 2) a copy of the returned stamped postcard confirming receipt of the Amendment and Petition for Extension of Time by the USPTO dated November 12, 2003 ; and 3) a copy of a check No. 2334 in the amount of $55.00 for the fee of one-month extension of time and a copy of Fidelity Account Transaction showing that Check No. 2334 cleared Fidelity on November 20, 2003.

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 of November 07, 2003 and then forwarded to the examiner for prompt consideration.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

COLLARD & ROE, P.C.
1077 NOTHERN BOULEVARD
ROSLYN, NY 11576-1696

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

DAVID TOREN, ESQ.
SIDLEY, AUSTIN, BROWN & WOOD, LLP
787 SEVENTH AVENUE
NEW YORK NY 10019-6018

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NOV 1 9 2003

OFFICE OF PETITIONS

In re Application of
Markus Hartmann
Application No. 09/931,135
Filed: August 16, 2001
Attorney Docket No. DT-4066

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 3, 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 October 23, 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 January 24, 2003.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111.

The application file is being forwarded to Technology Center 3700, Art Unit 3721.

Cheryl Gibson Baylor

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

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BRINKS HOFER GILSON & LIONE/PML
PO BOX 10395
CHICAGO, IL 60610

In re Application	:	
Huber, et al.	:	
Application No. 09/931,145	:	PATENT TERM ADJUSTMENT
Filed: August 15, 2001	:	
Dkt. No.: 6270/66	:	

This letter is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT 37 C.F.R. § 1.705(b)," filed December 2, 2004.

Applicants argue that the Office failed to issue the patent within three years from the date the application was filed in accordance with 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.702(b) and request an additional adjustment of 52 days.

Applicants are advised that decision on the instant request for reconsideration of patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is hereby **held in abeyance** subject to an issuance date being set by the Office of Patent Publications at which time the PTA will be routinely recalculated.

Applicants are further advised to submit a letter to the Office within two months of the issuance of the patent if, at the time of issuance of the patent, the appropriate adjustment under 37 C.F.R. § 1.703(a) has not been accorded.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 475 days.

The Office acknowledges receipt of the required fee of $200.00 for an application for patent term adjustment.

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

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BRINKS HOFER GILSON & LIONE/PML
PO BOX 10395
CHICAGO IL 60610

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JUL 20 2005

OFFICE OF PETITIONS

In re Patent No. 6,871,150	:	
Issued: March 22, 2005	:	
Application No. 09/931,145	:	PATENT TERM ADJUSTMENT
Filed: August 15, 2001	:	
Atty. Dkt. No.: 6270/66	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT UNDER 37 C.F.R. § 1.705(b)," filed May 12, 2005, requesting that the above-identified patent be accorded a patent term adjustment of 694 days. This matter is being treated as a timely request for reconsideration under 37 CFR 1.705(d).

The request for reconsideration of patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 6,871,150 on March 22, 2005. An initial request for reconsideration along with required $200.00 application fee were timely filed March 25, 2004 in accordance with 37 C.F.R. § 1.705(b). A decision was mailed February 8, 2005 wherein decision on request under 37 CFR 1.705(b) as held in abeyance pending issuance of the actual patent.

The patent issued with a PTA of 475 days. Applicants argue that in accordance with 35 USC 154(b)(1)(B) and 37 CFR 1.702(b), applicant is entitled to an additional adjustment of 219 for failure to issue the above-identified patent within three years from the date upon which the application was filed.

Review of the application history reveals that the Office failed to 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. See, 37 CFR 1.702(a)(1). Thus, an adjustment of 475 days under 37 CFR 1.703(a)(1) was accorded. The delay began October 16, 2002, the day after the date that is fourteen months after the date on which the application was filed, and ended February 2, 2004, the date of mailing of non-final Office action.

There were no further adjustments or reductions at the time of Allowance.

Applicants are correct in that the Office did not issue the patent within 3 years of the date upon which the application was filed on March 22, 2001. Specifically, the patent issued on March 22, 2005, three years and 219 days after its filing date. The period of delay under 35 U.S.C. 154(b)(1)(B) and § 1.702(b) is 219 days. See § 1.703(b).

However, 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 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 period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay totaling 475 days attributable to grounds specified in § 1.702(a)(1) and § 1.702(a)(2) overlap with the 219 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 475 days.

Thus, the PTA, as correctly indicated on the patent, is 475 days.

Any request for reconsideration of this decision must be submitted within 30 days of the mail date of this decision. This period of time for response cannot be extended under 37 CFR 1.136.

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

Karen A. Fries
for
Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

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MAR 2 4 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

TECHNOLOGY CENTER 3600

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

Darby & Darby, P.C.
805 Third Avenue
New York, NY 10022

In re application of
Augustine F. Udo, et al
Application No. 09/931,152 :
Filed: August 16, 2001 :
For: SYSTEM AND METHOD FOR CREATION OF BACKED DEPOSITARY RECEIPTS :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on February 14, 2005, 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 condition A)~~

As to condition A) the attorneys of record as listed in the power of attorney do not correspond to the attorneys listed for Customer Number 07278 thus causing confusion as to who is withdrawing. If all attorneys of record are to be withdrawn, it must be clearly stated in any substitute request.

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6619

RAR/dcg: 3/9/06

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United States Patent and Trademark Office
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TECHNOLOGY CENTER 3600

Darby & Darby, P.C.
805 Third Avenue
New York, NY 10022

In re application of
Augustine F. Udo, et al
Application No. 09/931,152
Filed: August 16, 2001
For: SYSTEM AND METHOD FOR CREATION OF BACKED DEPOSITORY RECEIPTS

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the renewed request filed on May 1, 2006 under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as an attorney of record in the above-identified application.

The request is **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 of record is accepted in the above-identified application because the request meets conditions (A) through (C).

This application will be forwarded to the Head Supervisory Legal Instruments Examiner for processing the withdrawal request and changing the correspondence address as stipulated in the renewed request.

Randolph A. Reese
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6619

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P.O. Box 1450
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Mailed: 5/16/05

WAK

In re application of
Mussmann, L. et al..
Serial No. 09/931, 162
Filed: August 17, 2001
For: OXYGEN STORAGE MATERIAL BASED ON CERIUM OXIDE

DECISION ON PETITION

This is a decision on the PETITION TO WITHDRAW HOLDING OF ABANDONMENT, filed March 29, 2005, for failure to timely pay the issue fee and publication fee within the statutory period of three months from the mailing date of the Notice of Allowance.

The application was not abandoned for failure to pay the issue fee but for failure to pay for an extension of time. Applicants timely filed a reply to the Final Office Action with a petition for a three-month extension of time and including a check for $980. Applicants further noted that the USPTO charge Deposit Account 11-0171 for any underpayments or fee deemed due. The $980 check was returned to the USPTO for lack of funds however the USPTO did not charge the deposit account.

DECISION

This petition 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 have merit.

The petition is **GRANTED.**

The fee for the extension of time will be charged to Deposit Account No. 11-0171 and the application will be returned to active status and forwarded to the examiner.

JMStone

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

Tor Smeland
Kalow & Springut LLP
488 Madison Avenue
19th Floor
New York, NY 10022

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Paper No.

David A. Kalow
Kalow & Springut LLP
488 Madison Avenue
19th Floor
New York NY 10022

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FEB 01 2007

OFFICE OF PETITIONS

In re Application of :
Mussmann et al. : DECISION ON PETITION
Application No. 09/931,162 :
Filed: August 17, 2001 :
Attorney Docket No. 33766W039 :

This is a decision on the "REQUEST FOR WITHDRAWAL OF ERRONEOUS ABANDONMENT" filed December 22, 2006.

The petition under 37 CFR § 1.181 is **DISMISSED**.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f).

The above-identified application became abandoned for failure to timely respond within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed June 29, 2005. This period is not extendable. No reply having been received, the above-identified application became abandoned on September 30, 2005. A courtesy Notice of Abandonment was mailed on December 19, 2005.

In response, applicants filed the instant petition. Applicants assert that the issue fee (and publication fee) was timely filed on April 4, 2005 in response to the Notice of Allowance and Fee(s) Due mailed December 30, 2004. It was further noted that by decision mailed May 16, 2005, a previous erroneous abandonment was withdrawn.

The facts and circumstances of the abandonment have been considered, and it has been determined that withdrawal of the abandonment is not warranted. As stated the application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed June 29, 2005. Applicants do not assert that this Notice was not received. Rather, applicants argue that their failure to respond should be excused because the fees were previously paid in response to the Notice mailed April 1, 2005.

However, the Notice specifically and boldly states that:

> THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

Applicants have not established that such action was taken. Accordingly, the application is properly regarded as abandoned.

Applicants are not precluded from submitting a petition to revive pursuant to § 1.137(a) or § 1.137(b).

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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Paper No.

David A. Kalow
Kalow & Springut LLP
488 Madison Avenue
19th Floor
New York NY 10022

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OFFICE OF PETITIONS

In re Application of	:	
Mussmann et al.	:	DECISION ON PETITION
Application No. 09/931,162	:	
Filed: August 17, 2001	:	
Attorney Docket No. 33766W039	:	

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed March 12, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely respond within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed June 29, 2005. This period is not extendable. No reply having been received, the above-identified application became abandoned on September 30, 2005. A courtesy Notice of Abandonment was mailed on December 19, 2005. By decision mailed February 1, 2007, a prior "REQUEST FOR WITHDRAWAL OF ERRONEOUS ABANDONMENT" filed December 22, 2006 was dismissed.

In response, applicants timely filed this petition to revive. The petition included the required reply[1] in the form of the Issue Fee transmittal and a statement that the Issue Fee (and Publication Fee) were previously paid; payment of the petition

[1] There was no distinct but concurrent requirement for drawings.

fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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WASHINGTON, D.C. 20231
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Paper No. 8
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OFFICE OF PETITIONS

PILLSBURY WINTHROP
P.O. BOX 10500
MCLEAN, VA 22102

In re Application of
Federico G. Jaekel
Application No. 09/931,170
Filed: August 17, 2001
Attorney Docket No. P280447

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed March 27, 2002 and supplemented on June 7, 2002.

The petition is granted.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

Petitioner has demonstrated that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, petitioner establishes that the inventor's solicitors was mailed a copy of the application papers and that the solicitors for non-signing inventor Jaekel confirmed in a letter dated March 5, 2002, the refusal of Mr. Jaekel to execute the Declaration and Power of Attorney for the patent application. Petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and demonstrated that such action is necessary to prevent irreparable damage.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703)306-5685.

This application is being forwarded to Initial Patent Examination Division for further preexamination processing.

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
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FEDERICO G. JAEKEL
17 DEER RUN COURT
RICHMOND HILL, ONTARIO, CANADA
L4E 3M1

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JUN 1 1 2002

OFFICE OF PETITIONS

In re Application of
Federico G. Jaekel
Application No. 09/931,170
Filed: August 17, 2001
For: EXTERIOR VACUUM MOLDED BODY PANELS

Dear Mr. Jaekel:

You are named as the sole inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as the sole 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 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
Lead Petitions Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

cc: PILLSBURY WINTHROP
P.O. BOX 10500
MCLEAN, VA 22102

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
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TC 3600

EPSTEIN, EDELL, SHAPIRO, FINNAN, & LYTLE, LLC
Suite 400
1901 Research Boulevard
Rockville, MD 20850-3164

Paper No. 8

In re application of
Randy Mersky, et al.
Application No. 09/931,187
Filed: August 17, 2001
For: METHOD AND APPARATUS FOR FACILITATING MANUAL PAYMENTS FOR TRANSACTIONS CONDUCTED OVER A NETWORK

DECISION ON PETITION TO MAKE SPECIAL (APPLICANT'S AGE)

This is a decision on the petition submitted on October 2, 2003 under 37 CFR 1.102 (c) to make the above-identified application special under the accelerated examination procedure set forth in MPEP 708.02, Section IV: Applicant's Age. The delay in deciding this petition is regretted.

The petition is **DISMISSED**.

An application may be accorded special status upon the filing of a petition providing evidence showing that the applicant is at least 65 years old. Such a showing may be provided by evidence such as a birth certificate or a statement from the applicant.

The evidence submitted with the petition is a photocopy of a drivers license but with the name of "Milton Mersky". The co-inventors name, as indicated and signed to in the declaration, is that of "Randy Mersky". There is no evidence in the file record which would indicate that these people are one in the same.

Any request for reconsideration must be filed within TWO MONTHS of the date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Should petitioner desire reconsideration, he should supplement this petition by a declaration or statement giving the information as outlined above. Applicant should promptly submit a renewed petition to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. The envelope should indicate that the correspondence be brought to the attention of Technology Center 3600.

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.

SUMMARY: Petition to Make Special **DISMISSED**.

Steven N. Meyers
Special Programs Examiner
Technology Center 3600
(703) 308-3868

SNM/cps 1/11/04

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 1, 2008

TO SPE OF : ART UNIT 2616

SUBJECT : Request for Certificate of Correction for Appl. No 09/931187 patent no7296003

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: _____

ANDREW J. FISCHER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

A Fischer

SPE

3621

Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
www.uspto.gov

Patent Group
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mail Date: 04/21/2010

Applicant	: Mathrubootham Janakiraman	: DECISION ON REQUEST FOR
Patent Number	: 7668907	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/931,211	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 08/16/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1029** 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

Technology Center 1700.

Mailed: 1/24/06

rvk
Paper No. _____

In re application of:
Ronald D. Key et al
Serial No.: 09/931,218
Filed: August 16, 2001
For: APPARATUS FOR C2 RECOVERY :

DECISION ON PETITION

This is a response to the PETITION UNDER 37 C.F.R. 1.181 TO WITHDRAW THE HOLDING OF ABANDONMENT, filed August 22, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of August 10, 2005, for failure to timely file a proper response to the Office letter dated October 05, 2004 be withdrawn. The petitioner asserts that applicants timely filed a proper response on November 05, 2004.

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 October 05, 2004 in a timely manner. The evidence provided includes a copy of the Response to the Office letter of October 05, 2004 with a Certificate of Mailing dated November 05, 2004 (EXHIBIT B) and a copy of a return postcard bearing the stamp of the USPTO dated November 08, 2004 (EXHIBIT C).

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application will be forwarded to the Technical Support Staff

for entering of the Response dated November 05, 2004 and then forwarded to the examiner for prompt consideration.

The Petition is **GRANTED.**

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

WILLIAM S. DORMAN
SUITE 830
460 S. BOULDER
TULSA, OK 74103

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,218	08/16/2001	Ronald D. Key	LBPP-0004	3801

7590 12/04/2007
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Suite 1400
2200 Clarendon Boulevard
Arlington, VA 22201

EXAMINER
NGUYEN, TAM M

ART UNIT	PAPER NUMBER
1797	

MAIL DATE	DELIVERY MODE
12/04/2007	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Mailed: 12-4-07

caf

In re application of	:	
Ron KEY et al.	:	DECISION ON
Serial No. 09/931,218	:	PETITION
Filed: August 16, 2001	:	
For: PROCESS FOR C2 RECOVERY	:	

This is a decision on the PETITION FOR WITHDRAWL OF FINALITY OF OFFICE ACTION UNDER 37 CFR 1.181 filed October 11, 2007.

A non-final rejection was mailed February 7, 2007. IN the non-final rejection claims 6 and 7 were rejected under 35 USC 112, and 35 USC 103 over U.S. Patent 6,712,880 to Foglietta. A response to the non-final rejection was filed on March 29, 2007. In this response it was argued that the U.S. Patent to Foglietta does not constitute prior art. Also, claims 8-24 were added. A final rejection was mailed June 7, 2007. In the final rejection, the 35 USC 103 rejection over U.S. Patent 6,712,880 to Foglietta was dropped. A rejection under 35 USC 102/103 over U.S. Patent 5,799,507 to Wilkinson was added. An amendment after final was filed September 7, 2007. In the amendment after final, several claim amendments were made and a request to withdraw the finality of the September 7, 2007 action was made. An advisory action was mailed September 19, 2007.

On October 11, 2007 the instant petition under 37 CFR 1.181 was filed to formally request the withdrawal of finality of the June 7, 2007 office action.

Applicants position for the withdrawal of the finality is that the new grounds of rejection in the final office action were not necessitated by Applicant's amendments to the claims but by the simple fact that the initial prior art rejection was undeniably improper because of the date of the reference.

DECISION

Section 706.07 of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Petitioner's argument that the new grounds of rejection in the final office action were not necessitated by Applicant's amendments to the claims but by the simple fact that the initial prior art rejection was undeniably improper because of the date of the reference is persuasive. The new grounds of rejection over claims 6 and 7 were not necessitated by Applicant's amendment because the amendments to claims 6 and 7 simply appear to be in response to the the 35 USC 112 rejections set forth in the non-final rejection. The examiner's arguments in the advisory action do not clarify how the amendments to claims 6 and 7 necessitated the application of a new reference.

The finality of the office action mailed September 7, 2007 was improper and the petition for withdrawal of finality is **GRANTED.**

The application is being forwarded to the examiner for entry and consideration of the amendment filed September 7, 2007.

Jacqueline M. Stone

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

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Suite 1400
2200 Clarendon Boulevard
Arlington VA 22201

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)
6582613	2003-06-24	09931230	2001-08-16	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		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	/Rick B. Yeager/	Date (YYYY-MM-DD)	2008-12-23
Name	Rick B. Yeager	Registration Number	39434

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. 6582613
Issue Date: June 24,2003
Application No. 09931230
Filed: August 16,2001
Attorney Docket No.

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

This is a decision on the electronic petition, filed December 23,2008 ,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 December 23,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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