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DEC 1 0 2001

OFFICE OF PETITIONS

Paper No. 3

Audley A. Ciamporcero Jr.
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933-7003

In re Application of
Christopher R. Butler et al.
Application No. 09/947,117
Filed: September 5, 2001
For: Method for Treating Allergies Using Substituted Pyrazoles

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed September 5, 2001.

The petition is dismissed.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 1.47(a)," and should only address the deficiencies noted below. 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; (4) a statement of the last known address of the non-signing inventor. Applicant lacks item(s) (1) set forth above.

As to item (1), 37 CFR 1.47(a) and 35 U.S.C. 116, second paragraph, requires 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." Rule 47 applicant failed to establish that the nonsigning inventor is unavailable to join in the filing of the instant application. In this regard, the declaration filed in support of the petition indicates that the nonsigning inventor is an employee of the "Robert Wood Johnson Pharmaceutical Research Institute" and at the time of filing the instant application, the nonsigning inventor was believed to be traveling in Canada and temporarily unavailable to sign the declaration. The declaration of facts also indicates that no telephone number,

facsimile number or address where the nonsigning inventor could be reached was available.

As set forth by Manual of Patent Examining Procedure (MPEP) § 409.03(d),

> 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 fact that a nonsigning inventor is on vacation or out of town and is therefore temporarily unavailable to sign the declaration is not an acceptable reason for filing under 37 CFR 1.47.
>
> Futhermore, the fact that an inventor is hospitalized and/or is not conscious is not an acceptable reason for filing under 37 CFR 1.47. 37 CFR 1.43 may be available under these circumstances. See MPEP § 409.02. Such a petition under 37 CFR 1.47 will be dismissed as inappropriate.
>
> The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally by 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 a] statement of facts. It is important that the statement contain facts as opposed to conclusions.

In the instant case, the statements provided do not indicate that the nonsigning inventor "could not be found or reached after diligent efforts" or refuse to join in the application as required by rule 37 CFR 1.47(a), but indicate that the nonsigning inventor was temporarily unavailable because he was out of town. Therefore, the petition under 37 CFR 1.47(a) is inappropriate.

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

By mail: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

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

Since 37 CFR 1.47(a), as explained above, does not apply to this application, this application is being returned to the Office of Initial Patent Examination Division for mailing of a Notice to File Missing Parts of Nonprovisional Application.

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

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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DIW 05-02

Paper No. 8

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

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MAY 0 6 2002

OFFICE OF PETITIONS

In re Application of	:	
Butler, Cai, Edwards, Grice, Gu,	:	
Gustin, Karlsson, Khatuya, Meduna,	:	DECISION REFUSING STATUS
Pio, Sehon, Sun, Tays, Thurmond,	:	UNDER 37 CFR 1.47(a)
and Wei	:	
Application No. 09/947,117	:	
Filed: 5 September, 2001	:	
Attorney Docket No. ORT-1495	:	

This is in response to the renewed petition filed under 37 CFR 1.47(a) on 8 January, 2002.

The petition is again **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 5 September, 2001, with a declaration naming Christopher R. Butler, Hui Cai, James P. Edwards, Cheryl A. Grice, Yin Gu, Darin J. Gustin, Lars Karlsson, Hanpada Khatuya, Steven P. Meduna, Barbara A. Pio, Clark A. Sehon, Siquan Sun, Kevin L. Tays, Robin L. Thurmond, and Janmei Wei as joint inventors and signed by all inventors except

Tays on behalf of themselves and joint inventor Tays. The petition filed on 5 September, 2001, was dismissed in a decision mailed on 10 December, 2001.

In response, the present request for reconsideration was filed on 8 January, 2002. Petitioners again assert that joint inventor Tays in out of town and cannot be reached.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of $130 or $65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). In regards to item (1), petitioners have still not provided sufficient proof that diligent efforts were made to contact the non-signing inventor. At a minimum, petitioners **must** send or give a copy of the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventor.[1] Petitioners may provide proof by submitting a copy of the cover letter transmitting the application papers to the non-signing inventor at his last known address or details given in an affidavit or declaration of facts by a person having first hand knowledge of the details.

In the event the inventor refuses to sign the declaration,[2] petitioners may show proof by providing a copy of any written refusal received from the non-signing inventor. 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.

If the application is returned as undeliverable, petitioners

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[1] MPEP 409.03(d).

[2] Id.

should submit a copy of the envelope showing that the application sent to the last-known address was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor should be set forth in an affidavit or declaration of facts by a person having first hand knowledge of the details. The fact that the non-signing inventor is out of town or on vacation is not a reason for filing under 37 CFR 1.47. It is also noted that petitioners state that the non-signing inventor was believed to be out of town until 10 September, 2001, on a paper dated 5 September, 2001. It is not understood why petitioners did not wait the five (5) calendar days until the inventor's expected return and try to contact him before filing the present renewed petition.

It is noted that petitioners submitted an additional petition fee with the present request for reconsideration. As no additional fee was due for reconsideration, petitioners may request a refund by writing to the Office of Finance, ATTN: Refund Section. A copy of this decision should accompany petitioners' request.

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 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

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United States Patent and Trademark Office
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OFFICE OF PETITIONS

In re Application of
Christopher R. Butler et al
Application No. 09/947,117
Filed: September 5, 2001
For: ORT-1495

:
:DECISION NOTING JOINDER OF
:INVENTOR AND PETITION UNDER
:37 1.47(a) MOOT
:

Papers filed on January 8, 2002 in response to a "Decision Refusing Status Under 37 CFR 1.47(a)," mailed December 10, 2001, included a Declaration signed by previously nonsigning inventor Kevin L. Tays in compliance with 37 CFR 1.63.

The decision mailed May 6, 2002 was mailed in error and is hereby vacated as the petition was accompanied by an executed declaration by the above-noted, previously non-signing inventor. Additionally, in view of the vacating of the May 6, 2002 decision on petition as being improper, the Notice of Abandonment mailed on December 16, 2002 is likewise improper and is hereby vacated. The Office sincerely apologizes for any inconvenience caused petitioner in this matter.

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).

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy
(571) 272-3218

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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OFFICE OF PETITIONS

PHILIP S. JOHNSON
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NEW BRUNSWICK NJ 08933-7003

In re Application of
Butler, et al.
Application No. 09/947,117
Filed: September 5, 2001
Attorney Docket No. ORT-1495

: DECISION ON PETITIONS
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed December 10, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **granted**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

> **(1)** the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The instant application was filed on September 5, 2001 and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an

amendment to the first sentence of the specification following the title, as required by 37 CFR §§ 1.78(a)(2)(iii) and 1.78(a)(5)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See* 35 U.S.C. §§ 120 and § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should <u>not</u> be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

This application is being forwarded to Technology Center Art Unit 1614 for appropriate action on the amendment submitted December 10, 2004, including consideration by the examiner of the claim under 35 U.S.C. § §120 and 37 CFR 1.78(a)(2) for the benefit of the prior-filed applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

Any questions concerning this matter may be directed to petitions attorney Edward Tannouse at (571)272-3228.

Frances Hicks

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

ATTACHMENT : Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/947,117	09/05/2001	Christopher R. Butler	ORT-1495	5687

27777 7590 06/09/2008

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EXAMINER	
HUGHES, ALICIA R	

ART UNIT	PAPER NUMBER
1614	

MAIL DATE	DELIVERY MODE
06/09/2008	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 0 9 2008

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In re Application of:
Butler et al.
Serial No.: 09/947,117
Filed: September 5, 2001
Attorney Docket No.: ORT-1495

: PETITION DECISION

This is in response to the petition under 37 CFR § 1.181, filed May 29, 2008, requesting that the Advisory Action mailed April 7, 2008, which refuses entry and consideration of the claim amendments filed under 37 CFR 1.116 after final Office action on December 19, 2007, be vacated.

BACKGROUND

More recently, applicants submitted an amendment on October 30, 2006 inserting limitations into claim 1.

The examiner mailed a final Office action on March 23, 2007, setting a three month statutory limit for reply. In this Office action, claims 1-14 were pending and examined. The examiner rejected claims 1-14 under 35 U.S.C. 112 first paragraph for lacking written description. More specifically, the examiner indicated that "A review of application as filed discloses Ar_2 as a bicyclic ring system, as reflected in amended claim 1, but it does not disclose the same with the moiety combination disclosed currently. Additionally, applicants failed to draw attention to the page and line numbers in the specification that support its amendment (p. 3, final Office action).

In response to the final Office action of March 23, 2007, applicants filed a request for reconsideration on March 27, 2007 asserting that all of the limitations of claim 1 were supported by the disclosure as originally filed, providing detailed citations where the limitations could be found.

The examiner mailed an Advisory Action on May 18, 2007 and indicated that the request for reconsideration was considered, but did not place the application in condition for allowance because:

> Defining a species by substituent does not meet the written description requirement, because the critical chemical feature essential to inhibiting the proteolytic activity of cathepsin S is unclear. In short, the genus lacks proper written description. In consideration of the foregoing, the previous rejection of record is upheld.

Applicants filed a Notice of Appeal on May 23, 2007.

Applicants filed a Request for Continued Examination under 37 C.F.R. 1.17(e) with the appropriate fees on September 17, 2007 concurrently with arguments traversing the examiner's statements in the Advisory Action of May 18, 2007.

The examiner mailed a final Office action on November 1, 2007, setting a three month statutory limit for reply. Claims 1-14 were pending and examined. The examiner maintained the rejection over claims 1-14 under 35 U.S.C. 112 first paragraph for lacking written description: "The Office, however, remains unconvinced of the same, because, as noted in the Advisory action of May 18, 2007, defining a species by substituent does not meet the written description requirement, because the critical chemical feature essential to inhibiting the proteolytic activity of cathepsin S is unclear" (p. 3, final Office action). The examiner further indicated the specific reasons why the claims lacked written description:

> Claim 1, line 13 (counting the formula (I) structure as one line: N only. It is noted that attachment members being O or S was not found as filed. It is also noted that the attachment member being "a carbon member" is not a heteroataom as required in said claim 1, line 13.Claim 1, line 16 (counting the formula (I) structure as one line: N only. It is noted that attachment members being O, S, SO2, or C=O in this option was not found as filed. Claim 1, line 18 (counting the formula (I) structure as line one: N only. It is noted that O, S, SO2, or C=O in this option was not found as filed. Thus, the amendment creates a compound that is not wholly substantiated in the specification by a single disclosed compound. Rather, the compound disclosed by the Applicants' amendment piece-meals portions of exemplary compounds, which when combined fail to exemplify the critical claim feature essential to inhibiting the proteolytic activity of cathepsin S. As stated prior, therefore, the genus lacks proper written description. (final Office action, p. 4)

In response to the final Office action of November 1, 2007, applicants filed an amendment after final Office action on December 19, 2007 which included remarks, arguments and amendments comprising the cancellation of claim 1 and amendment of claim 2.

The examiner mailed an Advisory Action on April 7, 2008. In this Advisory Action, the examiner indicated that the amendments filed after final Office action on December 19, 2007 would not be entered because they would raise new issues that would require further consideration and/or search. The examiner did not provide any subsequent reasons for this finding. The examiner additionally indicated that the request for reconsideration was considered, but did not place the application in condition for allowance for the same reasoning set forth in the final Office action; that is, in light of the non-entrance of the claim amendments, claim 1 was not cancelled and continued to recite new matter and thus lack written description under 35 U.S.C. 112 first paragraph.

In response thereto, applicants filed this petition under 37 CFR § 1.181 on May 29, 2008, requesting that the Advisory Action mailed April 7, 2008, which refuses entry and consideration of the claim amendments filed under 37 CFR 1.116 after final Office action on December 19, 2007, be vacated. The petition specifically requests entrance and consideration of the claim amendments filed after final Office action on December 19, 2007.

DISCUSSION

The petition and the file history have been carefully considered.

In the petition, applicants initially argue that the amendment filed under 37 C.F.R. 1.116 on December 19, 2007 (AF3, as referred to by applicants) was improperly refused entry contending that the amendments to the claims made therein were sought merely to place the claims in better form for allowance by obviating the examiner's previous rejection over claims 1-14 under 35 U.S.C § 112, first paragraph, for lacking written description.

As correctly established by applicants ' " A [r]eply to a final rejection or action must include cancellation of [...] each rejected claim." 37 C.F.R. § 1.113(c). Response AF3 cancelled the only claim to which the basis for the asserted rejection applied" (p. 5, petition).

Prosecution after final rejection is governed by 37 C.F.R.§ 1.116 which states, in part:

> (b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title):
> (1) An amendment may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action;
> (2) An amendment presenting rejected claims in better form for consideration on appeal may be admitted; or
> (3) An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented.

The examiner indicated on the Advisory Action form PTOL-303 that the proposed amendments filed after final rejection would not be entered because they raised new issues that would require further consideration and/or search, however, provided no specific limitations which would have required a new search and/or consideration. It is pointed out that the examiner communicated this information by checking box (3)(a). Box (3)(a) finalizes by stating '(see NOTE below)' which is present in order for the examiner to furnish an articulate communication explaining to applicants exactly what limitations, as amended, would require a further consideration and/or

search and reasons in support thereof. However, the examiner neglected to provide any reason why the amendment to claim 2 would require a new search and consideration.

A review of the amendment filed after final Office action on December 19, 2007 does show that applicants completely omitted the moieties of Ar_2 which were stated by the examiner in the final Office action of November 1, 2007 as lacking written description under 35 U.S.C § 112, first paragraph. However, due to applicants' additional amendments to claim 2, the examiner was correct in stating that the amendment filed after final rejection on December 19, 2007 would require a new consideration, even though no specific reasons in support thereof were given in the Advisory Action mailed on April 7, 2008. As an example of an embodiment which would support a new consideration of the claimed invention, applicants' amendment of December 19, 2007 deletes the definition of R^2 which is critical to the claimed invention due to the Ar_2 compound (e) found in claim 2 having an R^2 substituent. Thus, entrance of applicants' proposed amendments of December 19, 2007 would render claim 2 indefinite because R^2 in compound (e) of claim 1 would be undefined. Hence, the proposed amendment filed after final Office action on December 19, 2007 does not place the claims in better condition for appeal or allowance and would result in a new consideration on the part of the examiner as correctly stated by the examiner in the Advisory Action of April 7, 2008.

Applicants argue that the Advisory Action did not comply with the patent examination procedure because the action by the examiner was untimely. In support of this argument, Applicants cite MPEP § 714.13.III:

> An examiner is expected to turn in a response to an amendment after final rejection within 10 calendar days from the time the amendment is received by the examiner. A reply to an amendment after final rejection should be mailed within 30 days of the date the amendment is received by the Office. (p. 7, petition).

Applicants correctly point out that the examiner delayed in mailing the Advisory Action in response to Applicants' amendment after final Office action on December 19, 2007. Specifically, the Advisory Action was mailed approximately three and one half months after the amendment of December 19, 2007 was submitted by Applicants. It is a goal of the Office to provide expedited prosecution and therefore delays of this nature are regretful. However, delays due to unforeseen circumstances do occur in patent prosecution and while MPEP § 714.13.III provides guidelines for a timely response to an amendment filed after final rejection, the untimely nature of the Advisory Action mailed by the examiner is not grounds for entering the amendment filed after final Office action on December 19, 2007. Applicants were provided clear warning in the final Office action mailed November 1, 2007 that the statutory limit for reply to the final Office action was three months, extendable with appropriate extension fees:

> A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. *In the event a first reply is filed within TWO MONTHS. of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.* (p. 5, final Office action, November 1, 2007 – emphasis added).

Accordingly, upon careful review of the amendments submitted by applicants after final Office action on December 19, 2007, it is decided that the non-entrance of those claim amendments on the part of the examiner was appropriate for the reasons set forth above. Thus, applicants' request to enter and have considered the proposed claim amendments filed after final Office action on December 19, 2007 is denied.

DECISION

The petition is **DENIED.**

Should there be any questions about this decision please contact Marianne C. Seidel, by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0584 or by facsimile sent to the general Office facsimile number, 703-872-9306.

George C. Elliott

George Elliott
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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DR. BENJAMIN ADLER
ADLER & ASSOCIATES
8011 CANDLE LANE
HOUSTON TX 77071

MAILED

FEB 17 2009

OFFICE OF PETITIONS

In re Application of :
Pizzorni et al. : DECISION ON PETITION
Application Number: 09/947140 :
Filing Date: 09/04/2001 :
Attorney Docket Number: D6655 :
:

This is a decision on the petition under 37 CFR 1.137(b),[1] filed on January 9, 2009, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on April 5, 2008, for failure to file a timely and proper reply to the final Office action mailed on October 4, 2007, which set a three (3)-month shortened statutory period for reply. An amendment after final rejection and a petition and the required fee for a three (3)-month extension of time were filed on April 7, 2008 (certificate of

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

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

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

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

mailing date April 4, 2008). On May 29, 2008, however, an Advisory Action Before the Filing of an Appeal Brief was mailed, stating that the reply fails to place this application in condition for allowance. Notice of Abandonment was mailed on September 30, 2008

The subject petition is accompanied by a Request for Continued Examination (RCE) and the required fee. Petitioner has requested that the amendment filed on April 7, 2008 be considered as the reply required under 37 CFR 1.114.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

This application is being referred to Technology Center Art Unit 2169 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DR. BENJAMIN ADLER
ADLER & ASSOCIATES
8011 CANDLE LANE
HOUSTON TX 77071

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MAY 25 2006

OFFICE OF PETITIONS

In re Application of :
Charles P. Pace et al. :
Application No. 09/947,141 : ON PETITION
Filed: September 4, 2001 :
Attorney Docket No. D6645 :

This is a decision on the petition filed December 12, 2005, to revive the above identified application under 37 CFR 1.137(b)[1].

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

This application became abandoned January 19, 2005, for failure to file a timely response to the Office action in accordance with *Ex parte Quayle*,[2] mailed on November 16, 2004, which set a two (2) month period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed July 28, 2005.

The petition fee in the amount of $750.00 has been applied to the finance records for the instant patent application.

The amendment in response to the Office Action filed December 12, 2005 will be referred to Technology Center 2161 for further processing.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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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)).

[2] 1935 C.D. 11, 453 O.G. 213.

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FLIESLER MEYER, LLP
FOUR EMBARCADERO CENTER
SUITE 400
SAN FRANCISCO, CA 94111

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OFFICE OF PETITIONS

In re Application :
Bradley :
Application No. 09/947,188 : PATENT TERM ADJUSTMENT
Filed: September 4, 2001 :
Dkt. No.: ANRI-08026US1 MCF/TAW :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705(b)," filed May 3, 2004.

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

The Office will adjust the PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of mailing of the Notice of Allowance and Issue Fee Due reflects an adjustment of 175 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 the 84 days indicated on the Determination of Patent Term Adjustment mailed February 20, 2004 to 179 days.

A review of the application history reveals that an adjustment of 186 days under 37 CFR 1.702(a)(1) can be attributed to the Office. At the time of mailing of Notice of Allowance, there were no further delays attributed to the Office.

The Office errantly entered April 17, 2002 as the date of response to the Notice mailed October 12, 2001 rather than the date of receipt of January 16, 2002. Accordingly, the reduction of 186 days is reduced 4 days for applicants' failure to engage in reasonable efforts to conclude prosecution in accordance with 37 CFR 1.704(b). The delay began January 13, 2002, the day after the date that is three months after the date the Notice was mailed, and ended January 16, 2002, the date the response to the Notice was received.

The Office acknowledges that the response to the Notice bears a certificate of mailing date of December 7, 2001, however, the response was actually received by the Office on January 16, 2002. Thus, while the response is deemed timely, the date of actual receipt is used for all other purposes, in particular, calculation of PTA. *See*, 37 CFR 1.8(a) and 37 CFR 1.703(f).

Moreover, the Office is aware that the delivery of some mail to the USPTO between October and November of 2001 was delayed. If a reply to an Office action or notice was mailed on or after October 13, 2001 and no later than December 1, 2001 (as shown on a certificate of mailing under 37 CFR 1.8), and the applicant is otherwise entitled to patent term adjustment (or additional patent term adjustment) but for the fact that there was a reduction of such patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b) due to the receipt of such reply by the Office more than three business days after the date indicated on the certificate of mailing, the Office will consider the USPS mail situation discussed at 1254 OG 92 (January 15, 2002) to constitute a sufficient showing that, in spite of all due care, the applicant was unable to reply to the Office action or notice within three months of the date of mailing of the Office action or notice. In this situation, the Office will, subject to the conditions set forth below, reinstate a period equal to the period beginning on the date that is four business days after the date indicated on the certificate of mailing on the reply and the date of receipt (37 CFR 1.6) of the reply in the Office up to a maximum of three months.

The response to the Notice herein bears a certificate of mailing date of December 7, 2001. Thus, the actual date of receipt of the response must be used in the calculation of PTA.

Applicant is not contesting the additional reductions due to applicant's failure to engage in reasonable efforts to conclude prosecution. Accordingly, at the time of mailing of the Notice of Allowance, the adjustment of 186 days was reduced a total of 11 days for applicant's failure to engage in reasonable efforts to conclude prosecution resulting in a PTA at the time of mailing of the Notice of Allowance of 175 days.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 175 days.

The required fee of $200.00 for an application for patent term adjustment has been submitted.

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

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

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

Enclosure: Copy of Adjustment PAIR Calculation

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WORKMAN NYDEGGER
(F/K/A WORKMAN NYDEGGER & SEELEY)
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1000 EAGLE GATE TOWER
SALT LAKE CITY, UT 84111

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JUL 10 2006

OFFICE OF PETITIONS

In re Application of :
Scott R. Watterson, et al. :
Application No. 09/947,193 :
Filed: September 5, 2001 :
Attorney Docket No.: 13914.579.5 :

ON PETITION

This is a decision on the petition, filed June 30, 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 April 12, 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 3764 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).

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : November 16, 2007

TO SPE OF : ART UNIT 3764

SUBJECT : Request for Certificate of Correction for Appl. No. 09/947193 patent no.7166064

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: _____

/LoAn H. Thanh/ — **SPE**

3764 — **Art Unit**

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OFFICE OF PETITIONS

GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK CA 94025

In re Application of :
Williams et al. :
Application Number: 09/947202 :
Filing Date: 09/04/2001 : ON PETITION
Attorney Docket Number: P-2179 :

This is a decision on the petition under 37 CFR 1.137(b)[1] filed on April 15, 2007, to revive the above-identified application.

The Office apologizes for the delay in responding to the present petition, and regrets any inconvenience to petitioners.

The petition is **GRANTED**.

The above-identified application became abandoned on October 16, 2005, for failure to timely submit a proper reply to the final Office action mailed on July 15, 2005, which set a three (3)-month shortened statutory period for reply. On October 11, 2005, an amendment after final rejection was mailed. On February 10, 2006, an Adivsory Action Before the Filing of an Appeal Brief was mailed, stating that the reply filed on October 11, 2005 fails 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 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)).

place this application in condition for allowance. On June 12, 2006, Notice of Abandonment was mailed.

On April 15, 2007, the subject petition was filed, accompanied by a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

The Terminal Disclaimer filed on April 15, 2007, 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 $65.00 will be refunded to counsel.

Receipt of the revocation and power of attorney filed on August 13, 2009 is acknowledged. All correspondence will be mailed to the new address of record. A courtesy copy of this decision is being mailed to the address in the petition.

This application is being referred to Technology Center Art Unit 2617 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Encl: Notice Regarding Change of Power of Attorney
Notice of Acceptance of Power of Attorney

Cc: LAW OFFICES OF JAMES D. IVEY
3025 TROTTERDELL ST
OAKLAND CA 94611-1742

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
09/947,202	09/04/2001	Roland Williams	P-2179

CONFIRMATION NO. 6390

LAW OFFICES OF JAMES D. IVEY
3025 TOTTERDELL STREET
OAKLAND, CA 94611-1742

POWER OF ATTORNEY NOTICE

OC000000038513922

Date Mailed: 10/29/2009

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/13/2009.

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

/diwood/

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

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/947,202	09/04/2001	Roland Williams	P-2179

CONFIRMATION NO. 6390

22862
GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

POA ACCEPTANCE LETTER

OC000000038513924

Date Mailed: 10/29/2009

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/13/2009.

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.

/diwood/

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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Paper No. 11

PAULA A. BORDEN
BOZICEVIC, FIELD AND FRANCIS LLP
SUITE 200
200 MIDDLEFIELD ROAD
MENLO PARK CA 94025

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SEP 16 2002

OFFICE OF PETITIONS

In re Application of	:	
Carson et al.	:	
Application No. 09/947,209	:	DECISION DISMISSING
Filed: 4 September, 2001	:	PETITION
Attorney Docket No. UCAL-170CON6	:	

This is a decision on the petition filed on 14 June, 2002, requesting that above-identified application be accorded a filing date of 4 September, 2001, with Pages 27 and 30 as a part of the original disclosure.

The petition is **DISMISSED**.

The application was filed on 4 September, 2001. The present petition was filed on 14 June, 2002, along with a $130.00 petition fee. Petitioners concede that Pages 27 and 30 were omitted from the application as filed, but request that the application, included Pages 27 and 30, be accorded a filing date of 4 September, 2001. In support, petitioners argues that the present application is a continuation of Application No. 09/793,967, and incorporates the prior application by reference.

The arguments have been considered, but are not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that Pages 1-26, 28, 29, 31, 32, 34-69 of specification, including claims, sequence listing and one (1) page of abstract were filed on 4 September, 2001. No Pages 27 and 30 were filed on 4 September, 2001, since no such pages are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The

fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file.

At the outset, it is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of section 503 of the Manual of Patent Examining Procedure (MPEP).[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If 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, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.[2]

Since Pages 27 and 30 were not a part of the papers filed on 4 September, 2001, application cannot be accorded the 4 September, 2001, filing date with these pages as a part of the original disclosure of this application.

---

[1]The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

[2]MPEP 503.

It is noted that the Utility Patent Application Transmittal filed with the original application papers states that the present application is a continuation of Application No. 09/265,191. Further, the preliminary amendment filed with the original application papers on 4 September, 2001 states that the present application is a continuation of Application No. 09/265,191 filed 30 March, 1999, which is a continuation of Application No. 08/593,554, filed 30 January, 1996. Both the transmittal letter and the preliminary amendment states that the disclosures of the prior applications are incorporated by reference.

Section 201.06(c) of the Manual of Patent Examining Procedure 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 to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Pages 27 and 30 described in the specification are not new matter if they were a part of the disclosure of the prior application.

Accordingly, the petition is dismissed.

Pages 27 and 30 submitted with the present petition on 14 June, 2002, will not be entered or used during the prosecution of this application, but will be retained in the application file. However, applicant may resubmit Pages 27 and 30 as an amendment for consideration by the examiner under Sections 608.02(p) and 608.04 of the Manual of Patent Examining Procedure.

Petitioners are also advised that Page 33 appears to have been omitted from the application. If Page 33 was included in the prior application, petitioners may wish to consider including Page 33 in any preliminary amendment submitted in response to this petition.

The $130.00 petition fee will not be refunded because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

Receipt is acknowledged of the substitute drawings filed on 14 January, 2002. The substitute drawings are not part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 4 September, 2001, using only the application papers present 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

OIPE JC11
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OFFICE OF PETITIONS

In re Application of	:	
Carson et al.	:	
Application No. 09/947,209	:	DECISION DISMISSING
Filed: 4 September, 2001	:	PETITION
Attorney Docket No. UCAL-170CON6	:	

This is a decision on the petition filed on 14 June, 2002, requesting that above-identified application be accorded a filing date of 4 September, 2001, with Pages 27 and 30 as a part of the original disclosure.

The petition is **DISMISSED**.

The application was filed on 4 September, 2001. The present petition was filed on 14 June, 2002, along with a $130.00 petition fee. Petitioners concede that Pages 27 and 30 were omitted from the application as filed, but request that the application, included Pages 27 and 30, be accorded a filing date of 4 September, 2001. In support, petitioners argues that the present application is a continuation of Application No. 09/793,967, and incorporates the prior application by reference.

The arguments have been considered, but are not persuasive. The U.S. Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the papers originally filed reveals that Pages 1-26, 28, 29, 31, 32, 34-69 of specification, including claims, sequence listing and one (1) page of abstract were filed on 4 September, 2001. No Pages 27 and 30 were filed on 4 September, 2001, since no such pages are present among the application papers received on that date. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The

09/24/02 DOCKETED
Preliminary Amend 11/6/02

fact that petitioner believes the page was among the papers he included in the application is not more persuasive than the actual papers shown to have been received by the official file.

At the outset, it is noted that the USPTO has a long-established and well publicized practice for *prima facie* establishing the date of receipt of correspondence that has either been mailed or otherwise delivered to the PTO, and is asserted to have been subsequently misplaced: the itemized postcard receipt practice of section 503 of the Manual of Patent Examining Procedure (MPEP).[1] This practice requires that any paper(s) for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper(s). A postcard receipt which itemizes and properly identifies the paper(s) which is being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office. If 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, number of pages of oath/declaration. The postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard.[2]

Since Pages 27 and 30 were not a part of the papers filed on 4 September, 2001, application cannot be accorded the 4 September, 2001, filing date with these pages as a part of the original disclosure of this application.

---

[1]The public was afforded a "reminder" of the then extent post card receipt practice at 857 *Off. Gaz. Pat. Off.* 667 (*O.G.*) (Nov. 21, 1968). This specific notice is usually repeated annually, in a January "Consolidated Listing" section of the *O.G.* that contains important *O.G.* notices of continuing relevance.

[2]MPEP 503.

It is noted that the Utility Patent Application Transmittal filed with the original application papers states that the present application is a continuation of Application No. 09/265,191. Further, the preliminary amendment filed with the original application papers on 4 September, 2001 states that the present application is a continuation of Application No. 09/265,191 filed 30 March, 1999, which is a continuation of Application No. 08/593,554, filed 30 January, 1996. Both the transmittal letter and the preliminary amendment states that the disclosures of the prior applications are incorporated by reference.

Section 201.06(c) of the Manual of Patent Examining Procedure 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 to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. (emphasis supplied)

Obviously, in view of the incorporation by reference of the prior application, Pages 27 and 30 described in the specification are not new matter if they were a part of the disclosure of the prior application.

Accordingly, the petition is dismissed.

Pages 27 and 30 submitted with the present petition on 14 June, 2002, will not be entered or used during the prosecution of this application, but will be retained in the application file. However, applicant may resubmit Pages 27 and 30 as an amendment for consideration by the examiner under Sections 608.02(p) and 608.04 of the Manual of Patent Examining Procedure.

Petitioners are also advised that Page 33 appears to have been omitted from the application. If Page 33 was included in the prior application, petitioners may wish to consider including Page 33 in any preliminary amendment submitted in response to this petition.

The $130.00 petition fee will not be refunded because the present petition was not necessitated by any error on the part of the United States Patent and Trademark Office.

Receipt is acknowledged of the substitute drawings filed on 14 January, 2002. The substitute drawings are not part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 4 September, 2001, using only the application papers present 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 AND TRADEMARK OFFICE

#8

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ALEXANDRIA, VA 22313-1450
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MAILED

FEB 24 2004

Office of the Director
Group 3600

FISH & RICHARDSON P.C.
3300 DAIN RAUSCHER PLAZA
MINNEAPOLIS, MN 55402

In re application of
Kevin Lyons et al.
Application No. 09/947,212
Filed: September 4, 2001
For: APPARATUS AND METHOD FOR ENSURING AVAILABILITY OF INVENTORY FOR ELECTRONIC COMMERCE

Paper No. 8

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the supplemental request filed on January 13, 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 Item B) above.

As to Item B), there is no indication in the file record of the assignee being the "client", and responsible for payment of legal fees. Absent a 3.73(b) statement (e.g., a copy of an executed assignment) providing documentary evidence of a chain of title from the original owners to the assignee or a statement specifying where this evidence is recorded in the Office (e.g., reel and frame number), the "client" referred to in 37 CFR 10.40 is seen as being those individuals who conferred power upon the attorneys, in this case the inventors. Therefore, the stated reason for withdrawal that "failure by the client, Mercanti Systems, the assignee of the entire interest in the application, to pay outstanding invoices for more than one year...", is improper because there is no evidence in the file record establishing Mercanti Systems as the "client". A proper reason for withdrawal as enumerated in 37 CFR 10.40(b) subsections (1)-(4) or subsections (1)-(6) of 37 CFR 10.40(c) must be provided.

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

KJD/cps: 2/18/04

cc:

Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, California 94063

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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FEB - 7 2005

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FEB - 7 2005

OFFICE OF THE DIRECTOR
TC 3600

FISH & RICHARDSON P.C.
3300 DAIN RAUSCHER PLAZA
MINNEAPOLIS, MN 55402

In re application of
Kevin Lyons et al.
Application No. 09/947,212 : DECISION ON REQUEST
Filed: September 04, 2001 : FOR WITHDRAWAL OF
For: APPARATUS AND METHOD FOR : ATTORNEY
ENSURING AVAILABILITY OF
INVENTORY FOR ELECTRONIC
COMMERCE

This is a decision on the second supplemental request filed on November 02, 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).

A request to withdraw as attorney was filed on January 13, 2004. That request was not approved in a decision mailed February 24, 2004 wherein it was held that the request lacked conditions B) above.

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

As to condition B), simply stating the reel and frame numbers is insufficient. A 3.73(b) statement, having a chain of title or having a reel & frame number is needed.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
Facsimile No.: (703) 605-0586

SNM/slb: 02/03/05

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/26/2005

TO SPE OF : ART UNIT 3700(3744)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,880,351

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

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-922
Palm location **7580** - Tel. No. 305-8309

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

Ernest C. White, LIE305-8339
Certificates of Correction Branch

Thank You For Your Assistance

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

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

Comments:

Fig. 1 includes new matter (#114). Applicant will provide new set of drawings with markup copies (David Parkhurst. 8/17/05)

Cheryl J. A[illegible]
SPE

3744
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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GABE CHERIAN
P.O. BOX 1335
SUN VALEY ID 83353

COPY MAILED

OCT 0 7 2005

OFFICE OF PETITIONS

In re Application of :
Gabe Cherian :
Application No. 09/947,240 : DECISION GRANTING PETITION
Filed: September 5, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. None :

This is a decision on the petition under 37 CFR 1.137(b), filed June 16, 2005, to revive the above-identified application.

The petition is **GRANTED**.

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

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

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

This matter is being referred to Technology Center AU 3729.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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JUN 10 2004

KLARQUIST SPARKMAN, LLP
ONE WORLD TRADE CENTER, SUITE 1600
121 S.W. SALMON STREET
PORTLAND OR 97204

In re Application of	:
David C. H. Austin	:
Serial No.: 09/947,252	: SUSPENSION OF ACTION
Filed: September 5, 2001	:
Attorney Docket No.: 3788-56584-01	:

This is in reply to the petitions under 37 CFR 1.103 to suspend action on this application at applicant's request for a period of six months, filed October 6, 2003 and May 11, 2004.

A review of the file history shows that this is an examined plant patent application. A Final Office action was mailed to applicant after the filing of the original petition, but without action thereon. Applicant states that the only basis on which the application has been rejected is identical to the issue pending before the Court of Appeals for the Federal Circuit in an application having the same fact pattern for which a hearing was held April 9, 2004. Applicant states that a Final decision of the Court will be binding on this application with respect to rejection of record. As it is not permitted to suspend prosecution in an application in which there is an outstanding Office action, and as the petition should have been acted on prior to the mailing of the Office action, the Office action mailed January 8, 2004, is withdrawn.

§ 1.103 Suspension of action by the Office.

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

In view of the fact that the only issue raised by the examiner in a rejection is now before the Court and applicant's agreement to abide by that decision insofar as continuing prosecution is concerned and the expectation that such decision will be rendered within a reasonable amount of time, and that this type of issue applies only to a limited number of applications, namely Plant applications, suspension is appropriate.

In view of the above reason the petition is **GRANTED**.

Action on this application is suspended for a period of six months from the date of mailing of this decision. Should a Final Court decision not have been reached within that period of time resuspension may be requested. Upon receipt of a Final Court Decision applicant is requested to inform the Office thereof.

Should there be any questions with respect to this action, please contact the examiner or William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office general facsimile number, 703-872-9306.

Jasemine C. Chambers
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DEC 14 2004

KLARQUIST SPARKMAN, LLP
ONE WORLD TRADE CENTER, SUITE 1600
121 S.W. SALMON STREET
PORTLAND OR 97204

In re Application of	:	
David C. H. Austin	:	
Serial No.: 09/947,252	:	SUSPENSION OF ACTION
Filed: September 5, 2001	:	
Attorney Docket No.: 3788-56584	:	

This is in reply to the second petition under 37 CFR 1.103 to further suspend action on this application for a period of six months, filed November 18, 2004, and the subsequent request to withdraw the petition, filed December 6, 2004.

The above identified application was suspended from prosecution based on a related application pending before the Court of Appeals for the Federal Circuit having an identical issue before it for decision. A decision was rendered on August 16, 2004, pursuant to which a request for *en banc* hearing was filed. That request has now been denied. The decision of the Court was to return the application to the Office for further fact finding. In view of this action and essential affirming of the Office position, further suspension of prosecution in this application is not deemed appropriate. Any fact finding required in this application as a result of the Court decision should be made during further prosecution.

In view of applicant's withdrawal of the petition at applicant's request filed December 6, 2004, the petition is rendered **MOOT**.

In view of the withdrawal of the petition, the petition fee paid of $130.00 will be credited to applicant's Deposit Account No. 02-4550, as directed.

The application will be forwarded to the examiner for further action not inconsistent with this decision.

Should there be any questions with respect to this action, please contact the examiner or William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, P. O. BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0519 or by facsimile transmission at Office general facsimile number.

Jasemine C. Chambers
Director, Technology Center 1600

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

OPPENHEIMER WOLFF & DONNELLY LLP
2029 CENTURY PARK EAST, 38TH FLOOR
LOS ANGELES, CA 90067-3024

COPY MAILED

MAR - 7 2002

OFFICE OF PETITIONS

In re Application of :
David Hunter et al. :
Application No. 09/947,259 :
Filed: September 5, 2001 :
Attorney Docket No. 20433-14 :

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

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

Paper No. 4

OPPENHEIMER WOLFF & DONNELLY
2029 CENTURY PARK EAST
38TH FLOOR
LOS ANGELES, CA 90067-3024

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FEB 27 2002

OFFICE OF PETITIONS

In re Application of :
Ernest Martin :
Application No. 09/947,259 : NOTICE
Filed: September 5, 2001 :
Attorney Docket No. 20433-13 :

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 Initial Patent Examination Division.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 2 2 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/947,313

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

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

COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

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AUG 28 2006

OFFICE OF PETITIONS

In re Application of :
Nicholas E. Schnur :
Application No. 09/947,326 :
Filed: September 5, 2001 :
Attorney Docket No. :
U 0065 OS/LUAP :

This is a decision in response to the petition under 37 CFR 1.137(b), filed September 12, 2005, 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(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed 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 for failure to timely and properly reply to the final Office action, mailed March 9, 2005. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed an amendment on August 11, 2005; however, the amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed August 24, 2005.

Applicant files the instant petition and a Notice of Appeal on September 12, 2005. However, a review of office records reveals that Applicant has failed to file an appeal brief.

Applicable Law

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed); (**2**) the petition fee required by 37 CFR 1.17(m); (**3**) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (**4**) if required, a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). Applicant lacks item (**1**).

As to item (1), Applicant has failed to file an Appeal Brief. Applicant is advised that Appellant must file an appeal brief in compliance with 37 CFR 41.37 accompanied by the fee set forth in 37 CFR 41.20(b)(2) within two months from the date of filing the notice of appeal. See MPEP § 1205. Failure to file an appeal brief results in abandonment of the application.

While it is noted that at the time of the filing of the petition, Applicant's reply - the Notice of Appeal - was a complete and proper reply, the filing of the Notice of Appeal began the two (2) month period within which Applicant must file an appeal brief. Here, Applicant failed to file an appeal brief. Since no claims were allowed, the application became abandoned on November 13, 2005. See, 37 CFR 1.192 and MPEP 1206[1].

Alternatively, Applicant may withdraw the appeal (file a Request for Continued Examination) or file a continuing application.

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

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

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

---

[1] If the time for filing a brief has passed and the application has consequently become abandoned, the applicant may petition to revive the application, as in other cases of abandonment, and to reinstate the appeal; if the appeal is dismissed, but the application is not abandoned, the petition would be to reinstate the claims and the appeal, but a showing equivalent to that in a petition to revive under 37 CFR 1.137 is required. In either event, a proper brief must be filed before the petition will be considered on its merits.

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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COGNIS CORPORATION
PATENT DEPARTMENT
300 BROOKSIDE AVENUE
AMBLER, PA 19002

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DEC 0 8 2006

OFFICE OF PETITIONS

In re Application of	:	
Nicholas E. Schnur	:	
Application No. 09/947,326	:	ON PETITION
Filing or 371(c) Date: 09/05/2001	:	
Attorney Docket Number:	:	
U 0065 OS/LUAP	:	

This is a decision on the Request for Reconsideration of a Petition to Revive an Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b), filed September 13, 2006.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed March 9, 2005. The Office action set a three (3) month period for reply.

Applicant filed an Amendment on August 11, 2005; however, the Amendment failed to place the application in condition for allowance. Applicant was so notified in an Advisory Action mailed August 24, 2005.

Applicant filed a petition to revive and a Notice of Appeal on September 12, 2005, which was dismissed in a Decision mailed August 28, 2006, for failing to timely file a brief in support of appeal.

Applicant files the present Request for Reconsideration and notes the MPEP section 1215.01, which sets the time period for filing an appeal brief at two (2) months from an affirmative decision on petition.

Accordingly, the petition is granted. The application is being referred to Technology Center Art Unit 1751 to await the brief in support of appeal. **Applicant has two (2) months from the mailing of this Decision to file an appeal brief. Extensions of time are available under 37 CFR 1.136(a).**

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 11

ALZA CORPORATION
P O BOX 7210
INTELLECTUAL PROPERTY
DEPARTMENT
MOUNTAIN VIEW CA 94039-
7210

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MAR 2 9 2004

OFFICE OF PETITIONS

In re Application of

Brodbeck, et al. :

Application No. 09/947,421

: DECISION ON PETITION

Filed: October 25, 2001

:

Attorney Docket No. ARC 2587 N1

This is a decision on the petition under 37 CFR 1.137(b), filed March 26, 2004, 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 March 19, 2003, which set a shortened statutory period for reply of three (3) months from its mailing date. No extension of time pursuant to 37 CFR 1.136(a) was obtained within the allowable period. Accordingly, the application became abandoned on June 20, 2003. A Notice of Abandonment was mailed on October 16, 2003.

The amendment filed March 26, 2004, is noted and made of record.

Deposit account 10-0750 will be charged $1,330.00 for the instant petition fee.

The application is being forwarded to Technology Center 1600 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
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MYERS DAWES ANDRAS & SHERMAN, LLP
19900 MACARTHUR BLVD., SUITE 1150
IRVINE CA 92612

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JAN 0 5 2007

OFFICE OF PETITIONS

In re Application of :
FLORES :
Application No. 09/947,455 : DECISION ON PETITION
Filed: September 5, 2001 : TO WITHDRAW
Attorney Docket No. 155,059-6 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed November 2, 2006.

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

A review of the file record indicates that the power of attorney to Daniel L. Dawes of MYERS DAWES ANDRAS & SHERMAN LLP has been revoked by the applicant of the patent application on December 1, 2006. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

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

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **DAVID FLORES**
STRATEGY CENTRIC
3009 BERN DRIVE
LAGUNA BEACH, CA 92651

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
09/947,455	09/05/2001	David R. Flores	155,059-6

CONFIRMATION NO. 7132

OC000000021851426

23386
MYERS DAWES ANDRAS & SHERMAN, LLP
19900 MACARTHUR BLVD.,
SUITE 1150
IRVINE, CA 92612

Date Mailed: 01/05/2007

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 11/02/2006.

- 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).

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,523,479	2003-02-25	09/947,482	2001-09-06	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity

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

Small Entity

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

○ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

◉ The assignee of record of the entire interest

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	/Richard Allen/	Date (YYYY-MM-DD)	2009-02-23
Name	Richard Allen, COO of S & S Worldwide, Inc.		
Enter Reel and Frame Number			Remove
Reel Number	012158	Frame Number	0564
Enter Reel and Frame Number			Remove
Reel Number	013630	Frame Number	0521
Enter Reel and Frame Number			Remove
Reel Number	013638	Frame Number	0241
Enter Reel and Frame Number			Remove
Reel Number	022277	Frame Number	0774
Enter Reel and Frame Number			Remove
Reel Number	022288	Frame Number	0274
Click ADD for additional Reel Number and Frame Number			Add

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6523479
Issue Date: February 25,2003
Application No. 09947482
Filed: September 6,2001
Attorney Docket No. 00392.013

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

This is a decision on the electronic petition, filed February 23,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of February 23,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES 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

Crowell & Moring LLP
Evenson, Mckeown, Edwards & Lenehan
Intellectual Property Law Group
1200 G St., N.W., Suite 700
Washington, DC 20005

COPY MAILED

MAR 1 7 2004

OFFICE OF PETITIONS

In re Application of :
Fukasawa, et al. :
Application No. 09/947,544 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 381NP/50368

This is a decision on the petitions under 37 CFR 1.137(a) and 37 CFR 1.137(b), filed January 30, 2004, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

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

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

The above-identified application became abandoned for failure to reply to the non-final Office action mailed July 22, 2003, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was received within the allowable period, and the application became abandoned on October 23, 2003. A Notice of Abandonment was mailed on February 11, 2004.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition lacks items (1) and (2).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner argues that the non-final Office action was never received at the Office of Crowell and Morning, LLP, notwithstanding the submission of a timely change of correspondence address in transmittals filed.

As to item (1), the instant petition will not be considered grantable until an appropriate response is filed to the non-final Office action. An appropriate response may be an amendment or a continuing application.

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reason petitioner's argument must necessarily fail are addressed below.

Petitioner maintains that a timely request to change the correspondence address of record was filed on October 9, 2001, presumably changing the address of record to that of Crowell & Moring, LLP at P.O.Box 14300, Washington, DC 20044-4300. A review of the application file and corresponding Office computer records did reveal a correspondence address entry on October 9, 2001, with said address being that of Crowell, Moring, Evenson, McKeown, Edwards & Lenehan, 1200 G Street, NW, Suite 700, Washington, DC 20005, but no other address changes were noted. Further, the papers filed in the application do cite the address of Crowell & Moring, LLP at PO Box 14300, but do not call particular attention to the address .

Section 601.03 of the *Manual of Patent Examining Procedure* ("MPEP") explains that the notification of change of correspondence address does not need to take a particular form, however ". . . it should be provided in a manner calling attention to the fact that a change of address is being made. Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without

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[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

mention of the fact that an address change is being made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record."

Relative to the satisfaction of the unavoidable delay standard, Section 711.03 of the MPEP explains, in pertinent part, that ". . . the mere inclusion, in a paper filed in an application for another purpose, of an address differing from the previously provided correspondence address, without mention of the fact that an address change was being made . . . " does not constitute unavoidable delay. A review of the papers filed in the application papers did not reveal a specific statement directing the Office to change the correspondence address on file. Without more, petitioner's non-receipt of the non-final Office action at the address of Crowell & Moring, LLP at PO Box 14300 does not constitute unavoidable delay as a proper request to change the correspondence address of record was not made.

Petitioner is advised that the correspondence address of record remains that of Crowell & Moring LLP Evenson, Mckeown, Edwards & Lenehan as cited in the header of this decision and will not be changed until appropriate written instructions are received by the Office. A courtesy copy of this decision is being mailed to the address of Crowell & Moring as cited on the petition papers.

Deposit account 05-1323 will be charged $110.00 for the instant petition fee. See 37 CFR 1.17(l).

TREATMENT UNDER 37 CFR 1.137(b)

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

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

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (1) above.

As to item (1), the instant petition will not be considered grantable until an appropriate response is filed to the non-final Office action. Said response may be an amendment or a continuing application.

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

By mail:	Commissioner for Patents United States Patent and Trademark Office Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 872-9306 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

Further questions on this decision may be addressed to the undersigned at (703)305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Crowell & Moring, LLP
Intellectual Property Group
PO Box 14300
Washington, DC 20044-4300

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 11

Crowell & Moring LLP
Evenson, Mckeown, Edwards & Lenehan
Intellectual Property Law Group
1200 G St., N.W., Suite 700
Washington, DC 20005

COPY MAILED
APR 1 4 2004
OFFICE OF PETITIONS

In re Application of :
Fukasawa, et al. :
Application No. 09/947,544 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 381NP/50368

This is a decision on the renewed petitions under 37 CFR 1.137(a) and 37 CFR 1.137(b), filed March 31, 2004, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

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

The above-identified application became abandoned for failure to reply to the non-final Office action mailed July 22, 2003, which set a shortened statutory period for reply of three (3) months from its mailing date. No response was received within the allowable period, and the application became abandoned on October 23, 2003. A Notice of Abandonment was mailed on February 11, 2004. Petitions under 37 CFR 1.137(a) and 1.37(b) were filed on January 30, 2004, and dismissed by a decision mailed March 17, 2004.

TREATMENT UNDER 37 CFR 1.137(a)

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition under 37 CFR 1.137(a) lacks item (2).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner maintains that a continuing application was filed with the instant renewed petition.

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reason petitioner's argument must necessarily fail are addressed below.

Petitioner did not make any rebuttal argument to support the contention that delay in responding to the non-final Office action was unavoidable. In the absence of such argument, it is assumed that petitioner intends the application to be revived pursuant to 37 CFR 1.137(b) and, therefore, no further consideration will be given to the petition under 37 CFR 1.137(a).

TREATMENT UNDER 37 CFR 1.137(b)

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

Petitioner is again cautioned that 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, the Office will mail all future correspondence only to the address of record until appropriate written instructions to the contrary are received.

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

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[8] See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9] See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

Further questions on this decision may be addressed to the undersigned at (703)305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Crowell & Moring, LLP
Intellectual Property Group
PO Box 14300
Washington, DC 20044-4300

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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ROBERT E. HANSON
FULBRIGHT & JAWORSKI
STE. 2400
600 CONGRESS AVE
AUSTIN, TX 78701

COPY MAILED

AUG 2 4 2004

OFFICE OF PETITIONS

In re Application of :
Ruth S. Kobayashi : DECISION DISMISSING
Application No. 09/947,586 : PETITION
Filed: September 4, 2001 :
Attorney Docket No. ECKE: 113US :

This is a decision on the petition under 37 CFR 1.10(c), filed February 5, 2004, requesting that the above-identified application be accorded a filing date of September 6, 2001, rather than the presently accorded filing date of September 4, 2001. The petition is properly treated as a petition under 37 CFR 1.10(d).

Petitioner requests the later filing date on the basis that the application was purportedly deposited in "Express Mail" service with the U.S. Postal Service (USPS) on September 6, 2001, pursuant to the requirements of 37 CFR 1.10. Petitioner acknowledges that the "date-in" on the copy of the Express Mail receipt bears a handwritten "date-in" of September 4, 2001, while the USPS stamp dated September 6, 2001. Petitioner argues that the application was actually deposited with the USPS as Express Mail on September 6, 2001.

Paragraph (a) of 37 CFR 1.10 states that:

> 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).

(Emphasis supplied)

Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be, for example, the Express Mail Corporate Account Mailing Statement or a statement by an appropriate official of the USPS that according to a USPS record the "date-in" on petitioner's Express Mail receipt is erroneous accompanied by a copy of the relevant USPS record. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be, for example, a log book which contains information such as the Express Mail label number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of the log book entry.

The Express Mail receipt contains conflicting dates and is not persuasive that this application is entitled to the later filing date of September 6, 2001. Accordingly, petitioner must submit evidence in accordance with 1.10(d) to establish the date of deposit of the application papers for the instant case. Since the petition fails to provide corroborating evidence as required by 37 CFR 10(d), the petition is dismissed.

No petition fee is required and none has been charged.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be addressed as follows:

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

By hand: Crystal Plaza 1 Lobby
2011 South Clark Place
Room 1B03
Arlington, VA 22202

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

The application file is being referred Technology Center AU 1661 with a filing date of September 4, 2001.

Telephone inquiries specific to this matter should be directed to Wan Laymon at (703) 306-5685.

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

DAC.
IFW

OIPE JC169
SEP 2 4 2004
PATENT & TRADEMARK OFFICE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Ruth Kobayashi

Serial No.: 09/947,586

Filed: September 6, 2001

For: EUPHORBIA INTERSPECIFIC HYBRID PLANT NAMED "ECKCORY"

Group Art Unit: 1661

Examiner: Haas, W.

Atty. Dkt. No.: ECKE:113US

CERTIFICATE OF MAILING
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. 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 the date below:

September 21, 2004
Date

Robert E. Hanson

REQUEST FOR RECONSIDERATION OF DECISION ON PETITION FOR CORRECTED FILING DATE AND CORRECTED FILING RECEIPT UNDER 37 C.F.R. § 1.10(c)

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

Sir:

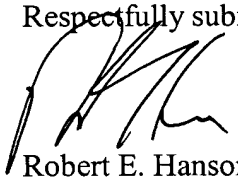
In a Decision mailed by the Office on August 24, 2004, Applicant's Petition to have the filing date of this application corrected from September 4, 2001 to September 6, 2001 was dismissed. The dismissal was made based on an asserted failure to include a showing under 37 CFR 1.10(d) "which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office Addressee' service prior to the last scheduled pickup for that day."

In response, Applicant has submitted herewith a copy of the Fulbright & Jaworski LLP "Express Mail Log" for the day the application was filed, September 6, 2001. **Exhibit A.** As can be seen in the attached copy, the Log lists the Express mail number under which this application was received, EL780053233, and shows that the Application was submitted to the Post Office on September 6, 2001. The Log was also stamped by the Post Office on September 6, 2001, demonstrating that the deposit of the correspondence was made that day, that the deposit was made before the last scheduled pickup for the day, and that the evidence of this deposit both came from the USPS and was made within one business day of the deposit. This evidence therefore meets all of the requirements for a grantable Petition under 37 CFR 1.10(d). Applicant therefore respectfully requests that the filing date of this application be corrected to September 6, 2001 and a filing receipt with the corrected filing date be entered in the case.

No fee is believed to be due in connection with the filing of this document. However, should any fee under 37 C.F.R. §§ 1.16 to 1.21 be deemed necessary for any reason relating to this document, the Commissioner is hereby authorized to deduct said fee from Fulbright & Jaworski L.L.P. Deposit Account No. 50/1212/ECKE:113US.

Please date stamp and return the enclosed postcard evidencing receipt of these materials.

Respectfully submitted,



Robert E. Hanson
Reg. No. 42,628
Attorney for Applicant

FULBRIGHT & JAWORSKI L.L.P.
600 Congress Avenue, Suite 2400
Austin, Texas 78701
(512) 536-3085

Date: September 21, 2004

BEST AVAILABLE COPY

OIPE
SEP 2 4 2004
PATENT & TRADEMARK OFFICE

Exhibit A

EXPRESS MAIL LOG – FULBRIGHT & JAWORSKI
AUSTIN, TEXAS 78701

EXPRESS MAIL NO.	RECHARGE NUMBER	ATTORNEY	DATE
EL780053233 US	10104240	REH	9-6-01
EL503180296 US	08001973	SLH	"
EL503180282 US	08001973	"	"

AUSTIN TX DOWNTOWN STA USPS SEP 6 2001

SIGNATURE: _____ DATE/TIME: _____
FULBRIGHT EMPLOYEE

SIGNATURE: Vicki [signature] DATE/TIME: 1807
POSTAL AGENT

AUSTIN TX DOWNTOWN STA USPS SEP 6 2001

INSTRUCTIONS: THIS FORM IS FOR THE MAILROOM USE ONLY. THE PERSON DELIVERING THE

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

WOOD HERRON & EVANS LLP
2700 CAREW TOWER
CINCINNATI OH 45202

COPY MAILED

JUL 16 2002

OFFICE OF PETITIONS

In re Application of :
Oeltgen, et al. :
Application No. 09/947,656 : DECISION REFUSING STATUS
Filed: September 6, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. ZYM/08US :
Title: PROTECTION AGAINST ISCHEMIA :
AND REPERFUSION INJURY

This is in response to the petition under 37 CFR 1.47(a), filed March 21, 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 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 September 6, 2001, without an executed oath or declaration. Accordingly, on October 25, 2001, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application. This Notice set a two month period for reply.

In reply, applicant filed the instant petition, and paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a three month extension of time. Accompanying the petition were statements of facts from Donald G. Keach and joint inventor Peter R. Oeltgen.

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.

Here, applicant has not demonstrated diligent effort in finding the non-signing inventor. With respect to showing diligent effort, "an affidavit or declaration of facts should be submitted that **fully describes the exact facts** which are relied on to establish that a diligent effort was made."[1] Applicant has provided no documentary evidence, such as a certified mail return receipt or copies of an internet search, to support such a finding[2]. In fact, a perfunctory internet search by the Petitions Attorney has revealed the name of the private hospital in Connecticut where non-signing inventor Dr. Juan A. Sanchez is employed as a Cardiothoracic Surgeon.[3]

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

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may 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) (emphasis added).

[2] Such documentary evidence should be made part of the affidavit or declaration. See id.

[3] The accompanying letter to the statement of facts from Peter Oeltgen stated that as of November 2001, Dr. Sanchez was believed to be seeking a "position as a Cardiothoracic Surgeon at a private hospital in the State of Connecticut."

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

WOOD HERRON & EVANS LLP
2700 CAREW TOWER
CINCINNATI OH 45202

COPY MAILED

SEP 16 2002

OFFICE OF PETITIONS

In re Application of :
Oeltgen, et al. :
Application No. 09/947,656 : DECISION NOTING JOINDER
Filed: September 6, 2001 : OF INVENTOR AND PETITION
Attorney Docket No. ZYM/08US : UNDER 37 CFR 1.47(A) MOOT
Title: PROTECTION AGAINST ISCHEMIA :
AND REPERFUSION INJURY

This is in response to the "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", filed August 15, 2002.

The above-identified application was filed on September 6, 2001, without an executed oath or declaration. Accordingly, on October 25, 2001, the Initial Patent Examination Division mailed applicant a Notice to File Missing Parts of Nonprovisional Application. This Notice set a two month period for reply.

In reply, applicant filed a petition under 37 CFR 1.47(a) on March 21, 2002, and paid both the petition fee and the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a three month extension of time. Accompanying the petition were statements of facts from Donald G. Keach and joint inventor Peter R. Oeltgen. Also included was a declaration executed by inventors Peter Oeltgen, Paul Bishop, and Mark Kindy, but not signed by inventor Juan Sanchez.

This petition was dismissed in a decision mailed on July 16, 2002. Petitioner did not show that a diligent effort had been made in finding non-signing inventor Juan Sanchez.

On renewed petition, petitioner has submitted a declaration executed by all of the inventors. The declaration has been found to be in compliance with 37 CFR 1.63.

In view of the **joinder** of the inventors, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered to be **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 further consideration under 37 CFR 1.47(a).

The application is being forwarded to the Office of Initial Patent Examination for continuation of pre-examination processing.

Telephone inquiries concerning this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

E. Shirene Willis for

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WOOD HERRON & EVANS LLP
2700 CAREW TOWER
441 VINE ST
CINCINNATI OH 45202

COPY MAILED

DEC 0 2 2004

OFFICE OF PETITIONS

In re Application	:	
Oeltgen, et al.	:	
Application No. 09/947,656	:	DECISION ON APPLICATION
Filed: September 6, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. ZYM-08US	:	

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT," filed November 11, 2004.[1] Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred twenty-eight (228) days to three hundred eighty-seven (387) 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 **three hundred eighty-seven (387) days.** A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On October 20, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified

[1] This application for patent term adjustment was timely filed, as it was filed after the mailing of the Notice of Allowance and before payment of the issue fee.

application. The Notice stated that the patent term adjustment (PTA) to date is two hundred twenty-eight (228) days.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred twenty-eight (228) days based on an adjustment for PTO delay of five hundred eighty-nine (589) 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 three hundred sixty-one (361) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The PTO delay of 589 days has been reviewed and found to be correct. The adjustment of 361 days is at issue.

The adjustment of 361 days has been found to be incorrect. A Notice to File Missing Parts of Nonprovisional Application was mailed on October 25, 2001. Applicants filed a reply in the form of a petition under 37 C.F.R. § 1.47(a) on March 21, 2002. As this was not timely pursuant to 37 C.F.R. § 1.704(b), 55 days of applicant delay should have been assessed. However, the petition under 37 C.F.R. § 1.47(a) contained an omission, as reflected by the fact that a decision dismissing the petition was mailed on July 16, 2002. Applicants did not file a grantable petition under 37 C.F.R. § 1.47(a) until August 15, 2002. Accordingly, applicant delay of one hundred forty-seven (147) days should have been assessed pursuant to 37 C.F.R. § 1.704(c)(7). In view thereof, applicants incurred a total delay of two-hundred two (202) days.

In view of the above, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **three hundred eighty-seven (387) days** (589 days of PTO delay, and 202 days of applicant delay).

The $200 fee set forth in 37 C.F.R. 1.18(e) has been charged to Deposit Account No. 23-3000, as authorized.

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

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : February 8, 2008

TO SPE OF : ART UNIT 2854 Judy Nguyen

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/947,670 Patent No.: 6916132 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**.

Should COCIN dated 2-25-2007 be approved? A certificate of correction has been issued February 5, 2008 adding inventor. Addition or deletion of inventors is to be decided on by supervisory Patent Examiner. Please review request, if the request should have been denied, a certificate of correction to vacate issued certificate will be issued.

Antonia Johnson
Certificates of Correction Branch
703-308-9390 ext. 111

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: Petition filed 8/22/02 should have been approved.

Judy Nguyen
JUDY NGUYEN
~~SUPERVISORY PATENT EXAMINER~~

_____ 2854
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

In re Patent No. 6761718
Issue Date: July 13,2004
Application No. 09947707
Filed: September 6,2001
Attorney Docket No. CHD-005

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

This is a decision on the electronic petition, filed October 8,2008 ,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 October 8,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6761718	2004-07-13	09947707	2001-09-06	701039-063910

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/David S. Resnick/	Date (YYYY-MM-DD)	2008-10-08
Name	David S. Resnick	Registration Number	34235

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20061109

DATE : November 9, 2006

TO SPE OF : ART UNIT 1632

SUBJECT : Request for Certificate of Correction on Patent No.: 7,030,098 B2

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

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

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

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

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

☒ **Approved** **All** changes apply.

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

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

Comments:

The examiner's amendment part of the notice of allowance mailed 7/14/05 was not entered and therefore was not reflected in the published patent. This certificate of correction incorporates the examiner's amendment of 7/14/05. Mr. Kevin Bastia, the attorney of record was contacted on 11/9/06 and a phone messasge was left on his voice mail.

RAM R. SHUKLA, PH.D.
SUPERVISORY PATENT EXAMINER
Au 1632

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO.: 7,030,098 B2 Page 1 of
DATED: April 18, 2006
INVENTOR(S): Lawrence Steinman et al.

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

Claims 1-3 have been rewritten as follows:

Claim 1: A method for reducing disease severity of multiple sclerosis in a human subject, the method comprising administering intramuscularly to the subject a plasmid DNA vector modified to have a low number of CpG motifs compared to the unmodified plasmid DNA vector and comprising an expression cassette, the expression cassette comprising a DNA encoding at least one immunodominant epitope of a human autoantigen associated with multiple sclerosis, so as to thereby reduce disease severity in the subject.

Claim 2: The method of claim 1, wherein the autoantigen is a full length protein.

Claim 3: The method of claim 1, wherein the autoantigen is a peptide of at least about 8 to about 30 amino acids.

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

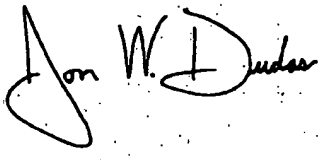
PATENT NO. : 7,030,098 B2
APPLICATION NO. : 09/947770
DATED : April 18, 2006
INVENTOR(S) : Lawrence Steinman et al.

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

column 1, 15, kindly insert:
-- This invention was made with Government support under contract NSO18235 awarded by the National Institutes of Health. The Government has certain rights in this invention.--

Signed and Sealed this

Seventh Day of November, 2006



JON W. DUDAS
Director of the United States Patent and Trademark Office

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

2007-1056
(Serial No. 09/947,801)

IN RE JED MARGOLIN

ORDER

SOLICITOR

AUG 9 2007

U.S. PATENT & TRADEMARK OFFICE

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

ORDER

Before Newman, Circuit Judge, Schall, Circuit Judge, and Dyk, Circuit Judge.

A petition for rehearing having been filed by the Appellant,

UPON CONSIDERATION THEREOF, it is

ORDERED that the petition for rehearing be, and the same hereby is, DENIED.

The mandate of the court will issue on August 7, 2007.

FOR THE COURT,

Jan Horbaly
Clerk

Dated: 07/31/2007

cc: Jed Margolin
Stephen Walsh

IN RE MARGOLIN, 2007-1056
(PTO - 09/947,801)

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT
JUL 31 2007
JAN HORBALY
CLERK

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

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OCT 2 9 2003

OFFICE OF PETITIONS

In re Application of
Chaoxin C. Qiu et al
Application No. 09/947,869
Filed: August 22, 2003
Attorney Docket No. SURG:156

:
:DECISION ON PETITIONS
:UNDER 37 CFR 1.181; 37
:CFR 1.183 AND 37 CFR
:1.137(b)

This is a decision on the papers titled "Petition Concerning Notice of Foreign Filing a Foreign Application of a U.S. Patent Application For Which A Nonpublication Request Was Rescinded Under 35 USC 122(b)(2), " filed August 22, 2003. The petition is being treated as a petition under 37 CFR 1.181, 37 CFR 1.183, and 37 CFR 1.137(b).

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

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

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

BACKGROUND

The above-identified application was filed on September 6, 2001. With the filing, applicants included a Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) requesting that the application not be published. The nonpublication request reads:

> I hereby certify that the invention disclosed in the attached application **has not been and will not be** the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b). [Emphasis applicants.]

On November 2, 2001, applicants filed a counterpart international application relating to the subject matter of the above-identified application. Applicants provided the notice of the foreign filing as required by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) when applicants filed this petition on August 22, 2003.

On January 4, 2002, applicants filed a Request to Rescind Nonpublication Request (35 U.S.C. § 122(b)(2)(B()(ii)), which bears a certificate of mailing date under 37 CFR 1.8 of October 18, 2001. This request stated that "I hereby rescind the previous request that the above-identified application not be published under 35 U.S.C. 122(b)." The rescission request does not make any mention of the fact that this application is, has been or will be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing.

On August 22, 2003, applicants filed the instant petition and stated that the invention disclosed in the above-identified application was filed in a foreign country on November 2, 2001. From these dates, the notice of the foreign filing as required by 35 U.S.C. 122(b)(2)(B(iii) was not filed within 45 days after the date of filing of the international application.

STATUTE AND LEGISLATIVE HISTORY

35 U.S.C. (b)(2)(B) states, in pertinent part:

> (i) If an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing, the application shall not be published as provided in paragraph (1).
>
> (ii) **An applicant may rescind a request made under clause (i) at any time**.
>
> (iii) An applicant who has made a request under clause (i) but who subsequently files, in a foreign country or under a multilateral international agreement specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall

> notify the Director of such filing not later than 45 days after the date of the filing of such foreign or international application. **A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned**, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.
>
> (iv) If an applicant rescinds a request made under clause (i) **or** notifies the Director that an application was filed in a foreign country or under a multilateral international agreement specified in clause (i), the application shall be published in accordance with the provisions of paragraph (1) on or as soon as is practical after the date that is specified in clause (i).[1]

The Congressional record explains that, if applicant has requested nonpublication because the application will not be filed "in a foreign country with a publication requirement, subparagraph (B)(iii) imposes a duty on the applicant to notify the Director of this fact. An unexcused failure to notify the Director will result in abandonment of the application." See 145 Cong. Rec. S14,718 (November 17, 1999).

PETITIONS UNDER 37 CFR 1.181 AND 1.183

Requested Relief under 37 CFR 1.181

As to the petition under **37 CFR 1.181**, applicants have requested that the foreign application filed by transmittal of PCT Application Serial No. PCT/US01/45494 by Express Mail on November 2, 2001, which included information identifying the above-captioned application by title, inventors, filing date and application number, be regarded as satisfying the notification of foreign filing requirements of 35 U.S.C. § 122(b)(2)(B)(iii).

Decision on Petition under 37 CFR 1.181

The argument that the filing of the PCT application satisfied the notification requirement of 35 U.S.C. § 122(b)(2)(B)(iii) of foreign filing is not persuasive. 37 CFR 1.213(c) requires the applicant to provide notice, and 37 CFR 1.4(b)

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[1] Emphasis added.

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 November 2, 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 at midnight December 17, 2001.

Requested Relief under 37 CFR 1.183

Alternatively, applicants request suspension of the rules under **37 CFR 1.183** if the Office finds that the filing of the PCT application does not satisfy the notification of foreign filing requirements of 35 U.S.C. § 122(b)(2)(B)(iii). In this regard, applicants contend that, despite the fact that the request to rescind the nonpublication request was mailed via certificate of mailing 15 days (i.e., on October 18, 2001) prior to the filing of the PCT application on November 2, 2001, the request to rescind was not processed and stamped by the USPTO until January 4, 2002, 78 days after the mailing of the request. With regard to the period during which the mails were delayed due to the anthrax discovery, applicants make reference to a notice published in the Official Gazette with

regard to the postal service delays caused by increased security procedures related to the discovery of anthrax in a Washington, D.C. mail facility and requests like relief with regard to the request to rescind the nonpublication request received on January 4, 2003 in the USPTO.

Decision on Petition under 37 CFR 1.183

As noted above, the request to rescind the nonpublication request was mailed via certificate of mailing under 37 CFR 1.8 on October 18, 2001, which was not received and stamped into the USPTO until January 4, 2002, due to mail delays. However, the relief provided for by the notice published in the Official Gazette of October 9, 2001, applies only to correspondence deposited by Express Mail under 37 CFR 1.10 and does not apply to mail deposited by first class mail under 37 CFR 1.8. In this regard, applicants' attention is directed to 1251 Official Gazette 55, which states:

> Parties submitting correspondence to the USPTO are reminded that 37 CFR 1.8 (certificate of mailing or transmission practice) does not provide for according a filing date as of the date of deposit with the USPS to correspondence submitted under 37 CFR 1.8. Therefore, it would be inappropriate to file a petition under 37 CFR 1.183 or 2.146(a)(5) and 2.148 to waive the requirements of 37 CFR 1.8.

In view of the above, applicants cannot rely on the notice published in the Official Gazette as a means for the requested relief under 37 CFR 1.183.

Moreover, the Notice published in the Official Gazette of July 1, 2003 (1272 Official Gazette 1), regarding the USPTO's clarification and interpretation of the provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), stated, in pertinent part under "In Summary:"

> (3) If an applicant makes a nonpublication request and subsequently files a counterpart application in an eighteen-month publication country before the nonpublication request is rescinded, 35 U.S.C. 122(b)(2)(B)(iii) requires the applicant to notify the USPTO of the foreign filing not later than forty-five days after the date such counterpart application was filed to avoid abandonment of the application.
> (4) When an application is abandoned by operation of 35 U.S.C.

> 122(b)(2)(B)(iii) due to the failure to timely notify the USPTO of the filing of a counterpart application in an eighteen-month publication country, applicant's sole remedy to restore the application to pending status is by filing a petition under 37 CFR 1.137(b) to revive the abandoned application.
> (5) Applicants should also provide a notice of foreign filing when rescinding a nonpublication request in anticipation of filing a counterpart application in an eighteen-month publication country because no benefit is given to a certificate of mailing or transmission under 37 CFR 1.8 on a rescission of a nonpublication request in determining whether applicant has rescinded the nonpublication request before or on the date a counterpart application is filed in an eighteen-month publication country.

Here, applicants' request to rescind the nonpublication request was mailed via certificate of mailing practice under 37 CFR 1.8, to which no benefit can be given. Further, since the request to rescind was not received in the USPTO until January 4, 2002, and the request did not provide any notice of foreign filing, compliance with 35 U.S.C. § 122(b)(2)(B)(iii) has not been satisfied. The Office has no authority pursuant to 37 CFR 1.183 to treat a rescission under 35 U.S.C. § 122(b)(2)(ii) as the notice of foreign filing required by 35 U.S.C. § 122(b)(2)(B)(iii). In addition, the Office has no authority to waive the 45 day period set forth in 35 U.S.C. § 122(b)(2)(B)(iii). As a result thereof, the application must be regarded as abandoned by operation of law. These are statutory requirements and a statutory requirement cannot be waived under the provisions of 37 CFR 1.183.

Moreover, as noted in item (4), applicants herein have a suitable remedy on hand that does not require the extraordinary remedy of invoking 37 CFR 1.183. It is brought to petitioner's attention that the USPTO will not normally consider an extraordinary remedy when the rules already provide an avenue for obtaining the relief sought. See Cantello v. Rasmussen, 220 USPQ 664 (Comm'r Pat. 1982). Furthermore, a standard principle of statutory construction is: *expressio unius est exclusion alterius* (the mention of one thing implies exclusion of another thing); namely, absent legislative intent to the contrary, when a statute expressly provides a specific remedy for a specific situation, the statute is deemed to exclude other remedies for such situation. See National R.R. Passenger Corp. v. National Ass'n Of R.R. Passengers, 414 U.S. 453, 458 (1974); see also Botany Worsted Mills v. United States, 278 U.S.

282, 289 (1929)("when a statute limits a thing to be done in a particular mode, it includes the negative of any other mode"). Since Congress has provided in Public Laws 97-247 and 106-103 specific schemes for the revival of abandoned applications (*i.e.*, the specific situations under which the PTO may revive an abandoned application and the specific requirements (fee amounts and standards) applicable to each specific situation), the creation of other schemes (e.g., the herein requested waiver of the rules under 37 CFR 1.183) for the revival of any abandoned application would be inconsistent with the patent statute. Thus, the Commissioner's authority to revive an abandoned application is limited to that specified in the statutory scheme set forth in 35 U.S.C. §§ 41(a)(7), 111, 122, 133, and 151. See Morganroth v. Quigg, 885 F.2d 843, 847, 12 USPQ2d 1125, 1128 (Fed. Cir. 1989)(the Commissioner lacks the authority to revive an application abandoned by termination of court proceedings because 35 U.S.C. §§ 41(a)(7), 133, or 151 do not provide for the revival of an application abandoned in such a manner).

PETITION UNDER 37 CFR 1.137(b)

Alternatively, applicants request revival of the instant application pursuant to the provisions of 37 CFR 1.137(b) 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).

Decision on Petition under 37 CFR 1.137(b)

As noted above, applicants stated in the petition that the instant nonprovisional application is the subject of a counterpart international application filed on November 2, 2001. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the international application.

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.

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

This application is being forwarded to Technology Center 2100 for examination in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

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FEB 2 0 2004

OFFICE OF PETITIONS

In re Application of
Niculus, et al.
Application No.: 09/947,886
Filed: September 5, 2001
Attorney Docket No: CL/V-31626P2

: ON PETITION

This is in response to the petition under 37 CFR 1.137(b) filed February 9, 2004.

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

On October 9, 2001, a "Notice to File Missing Parts of Nonprovisional Application" (the "Notice") was mailed by the Office allowing a two month period for reply. Extension of time were available pursuant to 37 CFR 1.136(a). The Notice required an oath or declaration and $130.00 surcharge. A proper response was not received within the allowable period, and the application became abandoned on December 10, 2001. A Notice of Abandonment was mailed on December 9, 2003.

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply form the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the Patent and Trademark Office.

The declaration filed February 9, 2004, is noted and made of record.

Deposit account 19-0134 will be charged $1,330.00 for the petition fee.

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 instant petition, all future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

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

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Robert Gorman
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MAY 25 2005

OFFICE OF PETITIONS

In re Application of :
Satish R. Parikh, et al. :
Application No. 09/947,930 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. D/A0A55 :

This is a decision on the petition, filed February 11, 2005, 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 reply in a timely manner to a Notice of Non-Compliance Amendment mailed June 10, 2004. A Notice of Abandonment was mailed on January 6, 2005. In response, on February 11, 2005, the present petition was filed.

The application file is being forwarded to Technology Center Art Unit 1756 for consideration of the amendment filed February 11, 2005.

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
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 26 2003

OFFICE OF PETITIONS

In re Application of :
George E. Friedman , et al. :
Application No. 09/947,932 : DECISION GRANTING PETITION
Filed: September 6, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. EMPIR-002BUS :

This is a decision on the petition filed June 10, 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 **GRANTED**.

Petitioner states that the instant non-provisional application is the subject of an application filed in a foreign country on October 25, 2001. However, the U. S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

A petition must be accompanied by:

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

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

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

The failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 USC 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 USC 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of October 2, 2003 accompanies this decision on petition.

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 2184 for examination in due course.

Marianne E. Morgan
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
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Paper No. 8

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JUL 12 2002

OFFICE OF PETITIONS

In re Application of
Mademba-Sy, Da Silva & Lehir
Application No.: 09/947,934
Filed: September 6, 2001
Attorney Docket No.: 60130-1209
For: ELECTRIC MOTOR COMPRISING IMPROVED MEANS OF FIXING AN END FLANGE TO A STATOR SHELL

DECISION NOTING JOINDER OF INVENTOR AND DISMISSAL OF PETITION UNDER 37 CFR 1.47(a) AS MOOT

Papers filed on June 25, 2002 in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on May 9, 2002, included a declaration signed by the previously nonsigning inventor, David Da Silva, 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).

A review of Office financial records indicates that petitioners have paid the petition fee twice. Pursuant to petitioners' authorization, deposit account no. 50-1482 will be credited one of the $130.00 petition fees.

This application will be forwarded to Technology Center 2800 for further processing.

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

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MAY 09 2002

OFFICE OF PETITIONS

In re Application of
Mademba-Sy, Da Silva & Lehir
Application No.: 09/947,934
Filed: September 6, 2001
Attorney Docket No.: 60130-1209
For: ELECTRIC MOTOR COMPRISING IMPROVED MEANS OF FIXING AN END FLANGE TO A STATOR SHELL

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed January 24, 2002 (certificate of mailing date December 3, 2001).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 6, 2001 without an executed oath or declaration. Accordingly, on October 9, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and filing fees, and a surcharge for their late filing.

In response, on January 24, 2002 (certificate of mailing date December 3, 2001), a declaration executed by 2 of 3 joint inventors, the surcharge, application filing fees, the petition fee, and the instant petition were filed. A declaration of facts of Elisabeth de Vanssay, an employee of a party in interest, accompanied the petition. Ms. de Vanssay explains that she mailed a copy of the application as filed to the non-signing joint inventor , David Da Silva, at his last known address, but that it was returned because there was no known forwarding address. In addition, one of the exhibits to the declaration states that a Mr. Breynaert, an employee of a party in interest, had searched for Mr. da Silva, but his efforts were unsuccessful.

A grantable petition under 37 CFR 1.47(a) requires

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

This petition lacks item (1).

As to item (1), Applicants have failed to establish that the inventor cannot be located. Where inability to find or reach a nonsigning inventor is alleged, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made to locate the nonsigning inventor.

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, any inquiries of the French telephone directories, or any extant national or regional registry, telegrams, Internet searches,[1] and **documented** inquiries of his last known employer etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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

E. Shirene Willis

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

[1] The undersigned found several phone numbers for the listing "David da Silva" in France on http://www.infospace.com.

UNITED STATES PATENT AND TRADEMARK OFFICE

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JUN 30 2010

OFFICE OF PETITIONS

In re Patent No. 7,034,008 :
Issue Date: April 25, 2006 :
Application No. 09/947,953 : NOTICE
Filed: September 6, 2001 :
Attorney Docket No. 001107.00441 :

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this application must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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Paper No. 6

SONNENSCHEIN NATH & ROSENTHAL
P.O. BOX 061080
WACKER DRIVE STATION, SEARS TOWER
CHICAGO IL 60606-1080

MAILED

APR 23 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Rajendra Patel. :
Application No. 09/947,980 :
Filed: September 6, 2001 :
For: METHOD AND SYSTEM FOR HIGH SPEED WIRELESS DATA TRANSMISSION AND RECEPTION :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on 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.**

David R. Metzger is withdrawn from the record. All other attorneys associated remain of record. Customer number 26,263 was never associated with the file of the instant application. 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: Gregory B. Gulliver
1131 Chesapeake Blvd.
Grayslake, IL 60030

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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LOCKE LIDDELL & SAPP LLP
600 TRAVIS
3400 CHASE TOWER
HOUSTON, TX 77002-3095

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JUL 25 2005

OFFICE OF PETITIONS

In re Application of :
Rick L. Tabor, et al. :
Application No. 09/947,997 : ON PETITION
Filed: September 6, 2001 :
Attorney Docket No. 019131/00104 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 16, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed January 27, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on April 28, 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 payment of the issue fee; (2) the petition and publication fees; and (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

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

This application matter is being forwarded to the Publishing Division for further processing.

Retta Williams

Retta Williams
Petitions Examiner
Office of Petitions
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. 8

BROOKS KUSHMAN P.C.
1000 TOWN CENTER
TWENTY-SECOND FLOOR
SOUTHFIELD MI 48075

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NOV 19 2004

OFFICE OF PETITIONS

In re Application of :
Anton Mindl et al. :
Application No. 09/948,000 : ON PETITION
Filed: September6, 2001 :
Attorney's Docket No. KOA0204PUS :

This is a decision on the petition filed October 6, 2004 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The instant application became abandoned on December 12, 2001, for failure to timely reply to the Notice to File Missing Parts, mailed October 11, 2001, which set a two (2) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Accordingly, a Notice of Abandonment was mailed January 30, 2004.

The oath or declaration and late filing surcharge, as required by the Notice to File Missing Parts mailed October 11, 2001 in addition to the petition fee is acknowledged.

All other requirements having been met , this application is being forwarded to the Office of Initial Patent Examination for further pre-examination processing.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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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MAY 15 2008

OFFICE OF PETITIONS

ALLERGAN, INC.
2525 DUPONT DRIVE, T2-7H
IRVINE CA 92612-1599

In re Application of Chow et al. :
Application No. 09/948,001 : Decision on Petition
Filing Date: September 6, 2001 :
Attorney Docket No. 17243CIP2DIVCON(AP) :

This is a decision on the petition under 37 CFR 1.137(b), filed September 28, 2007, to revive the above-identified application.

The petition is **granted**.

An Examiner's Answer containing a new ground of rejection was mailed August 18, 2006.

37 CFR 41.39(b) states,

> If an examiner's answer contains a rejection designated as a new ground of rejection, appellant must within two months from the date of the examiner's answer exercise one of the following two options to avoid *sua sponte* dismissal of the appeal as to the claims subject to the new ground of rejection:
>
> (1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence....
>
> (2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in § 41.41....

Petitioner did not file a response or request for an extension of time in response to the Examiner's Answer.

The Board of Patent Appeals and Interferences issued an "Order Dismissing Appeal" on August 30, 2007. The new ground of rejection had applied to all the pending claims. Therefore, the Order dismissed the entire appeal.

Since none of the claims had been allowed, the application became abandoned August 30, 2007.

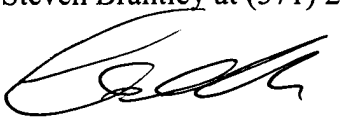
The instant petition requests revival of the application.

Petitioner has filed the reply brief referenced in 37 CFR 41.39(b)(2). Petitioner has submitted the petition fee in the form of an authorization to charge the fee to petitioner's deposit account. The sum of $1,500 has been charged to petitioner's deposit account. Petitioner has stated the entire delay from the date petitioner received the Examiner's Answer until the date the instant petition was filed was unintentional.

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 1626 will be informed of the instant decision and the examiner will review the reply brief in due course.

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



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES 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.

Altera Law Group, LLC
220 S 6 St Suite 1700
Minneapolis MN 55402

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MAR 3 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Gerhard Beitel et al.	:	
Application No. 09/948,010	:	DECISION ON TWO PETITIONS
Filed: September 5, 2001	:	PURSUANT TO 37 C.F.R.
Attorney Docket No. 3035.19-US-WO	:	§§ 1.55(c) AND 1.78(A)(3)
Title: METHOD FOR PRODUCING A MICROELECTRONIC STRUCTURE	:	

This is a decision on the two petitions pursuant to 37 C.F.R. §§ 1.55(c) and 1.78(a)(3), concurrently filed on October 19, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign German Application No. 19911150.2, filed March 12, 1999, and an unintentionally delayed claim under 35 U.S.C. § 365(a) for benefit of priority to the filing date of International Application No. PCT/DE2000/00786, filed March 10, 2000.

The petition pursuant to 37 C.F.R. § 1.55(c) is **DISMISSED**.

The petition pursuant to 37 C.F.R. § 1.78(a)(3) is **DISMISSED**.

With these two petitions, Petitioner has submitted an amendment to the specification, an Application Data Sheet (ADS), and the petition fee.

The petition pursuant to 37 C.F.R. § 1.55(c):

This application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the

actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 C.F.R. § 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 C.F.R. § 1.55(c).

A petition under 37 C.F.R. § 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, **and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 C.F.R. § 1.76(b)(6))**;
(3) the surcharge as set forth in 37 C.F.R. § 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

This petition fails to comply with items (2) and (4) above.

Regarding the second item, the ADS that was filed with this petition cannot be accepted, as it has not been executed. Petitioner will note that an ADS filed with the application is not required to be signed unless the ADS includes a nonpublication request. 37 C.F.R. § 1.33(b) requires that amendments and other papers, except for written assertions pursuant to 37 C.F.R. § 1.27(c)(2)(ii), filed in the application must be signed by an appropriate party. Therefore, an ADS or a supplemental ADS filed after the filing of an application must be signed in accordance with 37 C.F.R. § 1.33(b).

Unless provided for in an ADS, 37 C.F.R. § 1.63(c)(2) requires that the oath or declaration must identify the foreign application for which foreign application for patent (or inventor's certificate) for which a claim for priority is made pursuant to 37 C.F.R. § 1.55, and any foreign application having

a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. Note M.P.E.P. § 201.14. Moreover,

Regarding the fourth item, 37 C.F.R. § 1.55(c)(3) requires a statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The statement contained in this petition varies slightly from the language required by 37 C.F.R. § 1.55(c)(3). Moreover, it does not appear that Petitioner is in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

On renewed petition, Petitioner should provide an ADS that both contains a priority claim to German Application No. 19911150.2 and has been properly executed, as well as a statement of unintentional delay from one having firsthand knowledge of the entire delay.

The petition pursuant to 37 C.F.R. § 1.78(a)(3):

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

> (1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
> (2) the surcharge set forth in 37 C.F.R. § 1.17(t); and
> (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

This petition fails to comply with items (1) and (3) above.

Regarding the first item, as set forth previously, the ADS that was submitted concurrently with this petition cannot be accepted. Moreover, the reference to the international

application cannot be accepted, as "[t]his application is a 371 of international application number…" is not a proper reference.

Regarding the third item, 37 C.F.R. § 1.78(a)(3)(iii) requires a statement that the entire delay between the date the claim was due under paragraph (a)(2)(ii) of 37 C.F.R. § 1.78 and the date the claim was filed was unintentional.

The statement contained in this renewed petition varies slightly from the language required by 37 C.F.R. § 1.78(a)(3)(iii). Moreover, Moreover, it does not appear that Petitioner is in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue.

On renewed petition, Petitioner should provide an amendment to the specification that indicates that this application is a national stage application, pursuant to 35 U.S.C. § 371, of International Application No. PCT/DE2000/00786, filed March 10, 2000, as well as a statement of unintentional delay from one having firsthand knowledge of the entire delay.

Any reply should include a cover letter entitled "Renewed Petitions pursuant to 37 C.F.R. §§ 1.55(c) and 1.78(a)(3)." This is not a final agency action within the meaning of 5 U.S.C § 704.

The renewed petitions should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[1], hand-delivery[2], or facsimile[3]. Registered users of EFS-Web may alternatively submit a response to this decision via EFS-Web[4].

If responding by mail, Petitioner is advised not to place the undersigned's name on the envelope. Only the information that appears in the footnote should be included - adding anything else to the address will delay the delivery of the response to the deciding official.

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1 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
2 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
3 (571) 273-8300- please note this is a central facsimile number.
4 https://sportal.uspto.gov/authenticate/authenticateuserlocalepf.html

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (571) 272-3225[5]. All other inquiries concerning examination procedures should be directed to the Technology Center.

Anthony Knight
Supervisor
Office of Petitions

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5 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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Paper No.

Altera Law Group, LLC
220 S 6 St Suite 1700
Minneapolis MN 55402

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AUG 25 2008

OFFICE OF PETITIONS

In re Application of	:	
Gerhard Beitel et al.	:	
Application No. 09/948,010	:	DECISION ON TWO RENEWED
Filed: September 5, 2001	:	PETITIONS PURSUANT TO
Attorney Docket No. 3035.19-US-WO	:	37 C.F.R. §§ 1.55(c) AND 1.78(A)(3)
Title: METHOD FOR PRODUCING A MICROELECTRONIC STRUCTURE	:	

This is a decision on the two renewed petitions pursuant to 37 C.F.R. §§ 1.55(c) and 1.78(a)(3), concurrently filed on April 25, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 119(a)-(d) for benefit of priority to the filing date of foreign German Application No. 19911150.2, filed March 12, 1999, and an unintentionally delayed claim under 35 U.S.C. § 365(a) for benefit of priority to the filing date of International Application No. PCT/DE2000/00786, filed March 10, 2000.

The renewed petition pursuant to 37 C.F.R. § 1.55(c) is **GRANTED**.

The renewed petition pursuant to 37 C.F.R. § 1.78(a)(3) is **GRANTED**.

Two original petitions pursuant to 37 C.F.R. §§ 1.55(c) and 1.78(a)(3) were concurrently filed on October 19, 2007, along with an amendment to the specification, an Application Data Sheet (ADS), and the petition fee. Both of these petition were dismissed via the mailing of a single decision on March 31, 2008.

The renewed petition pursuant to 37 C.F.R. § 1.55(c):

This application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Since the claim for priority is submitted after the period specified in 37 C.F.R. § 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 C.F.R. § 1.55(c).

A petition under 37 C.F.R. § 1.55(c) to accept an unintentionally delayed claim for priority requires:

(1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
(2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date, and be included either in an oath or declaration (37 CFR 1.63(c)(2)) or in an Application Data Sheet (37 C.F.R. § 1.76(b)(6));
(3) the surcharge as set forth in 37 C.F.R. § 1.17(t);
(4) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.55(a)(1) and the date the claim was filed was unintentional (the Director may require additional information where there is a question whether the delay was unintentional); and
(5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The original petition was dismissed for failure to comply with items (2) and (4) above.

37 C.F.R. § 1.55(c)(3) requires a statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. Since the statement contained in this petition varies from the language required by 37 C.F.R. § 1.55(c)(3), the statement contained in this petition is being construed as the statement required by 37 C.F.R. § 1.55(c)(3) and **Petitioner must notify the Office if this is not a correct interpretation of the statement contained in this petition.**

With this renewed petition, Petitioner has included an acceptable ADS. Moreover, Petitioner has provided a declaration of facts from prior counsel, and as such, the concurrently submitted statement of unintentional delay has been made by one having firsthand knowledge of the facts contained therein. As such, requirements (2) and (4) above have been satisfied.

The petition pursuant to 37 C.F.R. § 1.78(a)(3):

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

(1) the reference required by 35 U.S.C. § 120 and 37 C.F.R. § 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in 37 C.F.R. § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The original petition was dismissed for failure to comply with items (1) and (3) above.

With this renewed petition, Petitioner has submitted a proper reference and has provided the proper statement of unintentional delay from one having firsthand knowledge of the facts contained therein. As such, requirements (1) and (3) above have been satisfied.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.55(c) should not be construed as meaning that this application is entitled to the benefit of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) and 35 § U.S.C. 119(a)-(d) and 37 CFR 1.55(a)(1) must be met. Similarly, the fact that the corrected

Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether this application is entitled to the benefit of the earlier filing date.

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

Technology Center Art Unit 2895 will be made aware of this decision, so that the Examiner may consider Applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120, 365(c) and 35 U.S.C. § 119(a)-(d) of the prior-filed applications.

Telephone inquiries regarding *this decision* should be directed to Senior Attorney Paul Shanoski at (571) 272-3225[1]. All other inquiries concerning examination procedures should be directed to the Technology Center.

Anthony Knight
Supervisor
Office of Petitions

1 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/948,010	09/05/2001	2895	1258	3035.19-US-WO	13	1

CONFIRMATION NO. 9643

CORRECTED FILING RECEIPT

22865
Altera Law Group, LLC
220 S 6 St Suite 1700
Minneapolis, MN 55402

Date Mailed: 08/25/2008

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

Applicant(s)

Gerhard Beitel, Muhldorf/Inn, GERMANY;
Wolfgang Hoenlein, Unterhaching, GERMANY;
Reinhard Stengl, Stadtbergen, GERMANY;
Elke Fritsch, Munich, GERMANY;
Siegfried Schwarzl, Neubiberg, GERMANY;
Hermann Wendt, Grasbrunn, GERMANY;

Power of Attorney:
Craig Gregersen--31832

Domestic Priority data as claimed by applicant

Foreign Applications
GERMANY PCT/DE00/00786 03/10/2000
GERMANY 19911150.2 03/12/1999

If Required, Foreign Filing License Granted: 10/09/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/948,010**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method for producing a microelectronic structure

Preliminary Class

438

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

OIPE JC117 JAN 16 2002 PATENT & TRADEMARK OFFICE

COPY OF PAPERS ORIGINALLY FILED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket Nos. 71369.218 and PFI-012US)

In re Application of:	Blumenberg	)	Examiner: To Be Assigned
		)	
Serial No:	09/948,020	)	Group Art Unit: 3762
		)	
Filing Date:	September 6, 2001	)	

For: SCREENING METHODS TO IDENTIFY COMPOUNDS THAT MODULATE A RESPONSE OF A CELL TO ULTRAVIOLET RADIATION EXPOSURE

****

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §1.8

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: **BOX MISSING PARTS, Commissioner for Patents, Washington, DC 20231** on the date indicated below.

Date: 12/13/01 Heather May
Heather May

****

BOX MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION
Filed Under 37 C.F.R. 1.53(b)

Dear Sir:

In response to the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001, Applicant submits the following documents for filing in the above-referenced patent application:

1. Copy of the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001; and
2. Executed Declaration and Power of Attorney.

The surcharge fee of $130.00 pursuant to 37 C.F.R. §1.16(e) is to be charged to Deposit Account No. 08-0219. Please also charge any additional fees which might be due to Deposit Account No. 08-0219.

If there are any questions, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
HALE AND DORR LLP

Robert McIsaac, Ph.D., Reg. No. 44,918
Agent for Applicant

Date: December 7, 2001

HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
(617) 526-5000 (Facsimile)

OIPE JC517
JAN 16 2002
PATENT & TRADEMARK OFFICE

COPY OF PAPERS
ORIGINALLY FILED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket Nos. 71369.218 and PFI-012US)

In re Application of:	Blumenberg	)	Examiner: To Be Assigned
		)	
Serial No:	09/948,020	)	Group Art Unit: 3762
		)	
Filing Date:	September 6, 2001	)	

For: SCREENING METHODS TO IDENTIFY COMPOUNDS THAT MODULATE A RESPONSE OF A CELL TO ULTRAVIOLET RADIATION EXPOSURE

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CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §1.8

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: **BOX MISSING PARTS, Commissioner for Patents, Washington, DC 20231** on the date indicated below.

Date: 12/3/01 Heather May
Heather May

****

BOX MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

Dear Sir:

Enclosed herewith for filing in the above-identified patent application are the following documents:

1. Response to Notice to File Missing Parts of Nonprovisional Application;
2. Copy of the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001;
3. Executed Declaration and Power of Attorney;
4. Certificate of First Class Mailing; and
5. Return Postcard.

Please charge any additional fees or credit any overpayment to our Deposit Account No. 08-0219. If there are any questions, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
HALE AND DORR LLP

Robert McIsaac, Ph.D., Reg. No. 46,915
Agent for Applicant

Date: December 3, 2001

HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
(617) 526-5000 (Facsimile)

JAN 16 2002
PATENT & TRADEMARK OFFICE
SC117

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
09/948,020	09/06/2001	Miroslav Blumenberg	71369.218 (PFI-012US)

CONFIRMATION NO. 8014

23483
HALE AND DORR, LLP
60 STATE STREET
BOSTON, MA 02109

FORMALITIES LETTER

OC000000006898401

Date Mailed: 10/12/2001

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 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 $ 130.**

A copy of this notice MUST be returned with the reply.

mp

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

01/22/2002 SDIRETAI 00000154 080219 09948020
01 FC:105 130.00 CH

OIPE
JAN 16 2002
PATENT & TRADEMARK OFFICE
TC 1700

COPY OF PAPERS
ORIGINALLY FILED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket Nos. 71369.218 and PFI-012US)

In re Application of:	Blumenberg	)	Examiner: To Be Assigned
		)	
Serial No:	09/948,020	)	Group Art Unit: 3762
		)	
Filing Date:	September 6, 2001	)	

For: SCREENING METHODS TO IDENTIFY COMPOUNDS THAT MODULATE A RESPONSE OF A CELL TO ULTRAVIOLET RADIATION EXPOSURE

****

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §1.8

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: **BOX MISSING PARTS, Commissioner for Patents, Washington, DC 20231** on the date indicated below.

Date: 12/13/01 Heather May
Heather May

****

BOX MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION
Filed Under 37 C.F.R. 1.53(b)

Dear Sir:

In response to the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001, Applicant submits the following documents for filing in the above-referenced patent application:

1. Copy of the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001; and
2. Executed Declaration and Power of Attorney.

The surcharge fee of $130.00 pursuant to 37 C.F.R. §1.16(e) is to be charged to Deposit Account No. 08-0219. Please also charge any additional fees which might be due to Deposit Account No. 08-0219.

If there are any questions, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
HALE AND DORR LLP

Robert McIsaac, Ph.D., Reg. No. 44,918
Agent for Applicant

Date: December 13, 2001

HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
(617) 526-5000 (Facsimile)

OIPE JC117
JAN 1 6 2002
PATENT & TRADEMARK OFFICE

COPY OF PAPERS
ORIGINALLY FILED

S3/0702

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket Nos. 71369.218 and PFI-012US)

In re Application of:	Blumenberg	)	Examiner: To Be Assigned
		)	
Serial No:	09/948,020	)	Group Art Unit: 3762
		)	
Filing Date:	September 6, 2001	)	

For: SCREENING METHODS TO IDENTIFY COMPOUNDS THAT MODULATE A RESPONSE OF A CELL TO ULTRAVIOLET RADIATION EXPOSURE

****

CERTIFICATE OF FIRST CLASS MAILING UNDER 37 CFR §1.8

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: **BOX MISSING PARTS, Commissioner for Patents, Washington, DC 20231** on the date indicated below.

Date: 12/3/01

Heather May
Heather May

****

BOX MISSING PARTS
Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

Dear Sir:

Enclosed herewith for filing in the above-identified patent application are the following documents:

1. Response to Notice to File Missing Parts of Nonprovisional Application;
2. Copy of the Notice to File Missing Parts of Nonprovisional Application, mailed October 12, 2001;
3. Executed Declaration and Power of Attorney;
4. Certificate of First Class Mailing; and
5. Return Postcard.

Please charge any additional fees or credit any overpayment to our Deposit Account No. 08-0219. If there are any questions, please call the undersigned at the telephone number indicated below.

Respectfully submitted,
HALE AND DORR LLP

Robert McIsaac, Ph.D., Reg. No. 46,918
Agent for Applicant

Date: December 3, 2021

HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
(617) 526-5000 (Facsimile)

#6

JAN 16 2002
PATENT & TRADEMARK OFFICE
JC117

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/948,020	09/06/2001	Miroslav Blumenberg	71369.218 (PFI-012US)

CONFIRMATION NO. 8014

FORMALITIES LETTER

OC000000006898401

23483
HALE AND DORR, LLP
60 STATE STREET
BOSTON, MA 02109

Date Mailed: 10/12/2001

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 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 $ 130.**

A copy of this notice MUST be returned with the reply.

mp

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

01/22/2002 SDIRETA1 00000124 080219 09948020
01 FC:105 130.00 CH

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAIL

FEB 11 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

AT&T CORP.
P.O. BOX 4110
MIDDLETOWN NJ 07748

In Re Application of :
Michael M. Goodwin :
Application Serial No. 09/948,053 :
Filed: September 5, 2001 :
For: **EFFICIENT SYSTEM AND METHOD FOR CONVERTING BETWEEN DIFFERENT TRANSFORM-DOMAIN SIGNAL REPRESENTATIONS** :

DECISION ON PETITION
TO EXPUNGE

This is a response to the petition filed December 16, 2004 under 37 CFR 1.59(b), to expunge information from the above identified application.

Petitioner requests that a copy of an unpublished manuscript was unintentionally submitted in the Information Disclosure Statement, filed September 5, 2001, be expunged from the record. MPEP 724.05(II) states in part:

> A petition to expunge information unintentionally submitted in an application (other than information forming part of the original disclosure) may be filed under 37 CFR 1.59(b), provided that:
> (A) the Office can effect such return prior to the issuance of any patent on the application in issue;
> (B) it is stated that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted;
> (C) the information has not otherwise been made public;
> (D) there is a commitment on the part of the petitioner to retain such information for the period of any patent with regard to which such information is submitted;
> (E) it is established to the satisfaction of the Commissioner that the information to be returned is not material information under 37 CFR 1.56; and
> (F) the petition fee as set forth in 37 CFR 1.17(h) is included.

Petitioner has not complied with parts B and D above.

Accordingly the petition is **DENIED**.

Petitioner is given **TWO MONTHS** from the date of this decision to complete the requirements as described above. This period is non-extendable under 37 CFR 136(a).

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

November 13, 2007

Kurt L. Grossman
WOOD, HERRON & EVANS, LLP
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202

Patent No: 6,663,592 B2
Application No: 09/948,088
Applicant: Edward A Rhad, et al.
Issued: December 16, 2003
Title: **CATHETER INTRODUCER ASSEMBLY HAVING SAFETY SHIELDED NEEDLE**

Request for Certificate of Correction:

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

Inspection of column 4, line 33 in the printed patent, reveals that there is no error in this location.

In view of the foregoing your request in these matters are hereby **denied**.

Further consideration will be given upon receipt of a Request for Reconsideration, which should be directed to Decisions and Certificate of Correction Branch.

Virginia Tolbert
For Cecelia Newman, Supervisor
Decisions and Certificate of Correction
(703) 308-8309 or (703) 308-9390 ext. 113

vt

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

PROSKAUER ROSE LLP
PATENT DEPARTMENT
1585 BROADWAY
NEW YORK NY 10036

COPY MAILED

MAY 28 2002

OFFICE OF PETITIONS

In re Application of
Velez, et al.
Application No. 09/948,109
Filed: September 5, 2001
Attorney Docket No. 10251-045
Title: METHOD AND SYSTEM FOR ALLOCATING ASSETS IN EMERGING MARKETS

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed February 20, 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 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 C.F.R. 1.136(a).

The above-identified application was filed on September 5, 2001. On October 15, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring the missing filing fees, as well as an executed oath or declaration 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), paid the filing fees, and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a two month extension of time. Accompanying the petition were, *inter alia*,: (1) an affidavit from attorney Gregg Goldman, describing the efforts to obtain a signature from inventor Gawaine Lewis; (2) a copy of a cover letter from Goldman to Lewis, transmitting the application papers; and (3) a declaration for patent application signed by inventors Deborah Velez and Marco Santamaria.

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 (2) above.

As to requirement (2), the declaration is not acceptable because the alteration to the address of Marco Santamaria is not dated and initialed or signed.[1]

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] "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialed or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).

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

PROSKAUER ROSE LLP
PATENT DEPARTMENT
1585 BROADWAY
NEW YORK NY 10036

COPY MAILED

AUG 3 0 2002

OFFICE OF PETITIONS

In re Application of
Velez, et al.
Application No. 09/948,109
Filed: September 5, 2001
Attorney Docket No. 10251-045
Title: METHOD AND SYSTEM FOR ALLOCATING ASSETS IN EMERGING MARKETS

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the renewed petition under 37 CFR 1.47(a), filed July 8, 2002.

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on September 5, 2001. On October 15, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring the missing filing fees, as well as an executed oath or declaration and a surcharge for its late filing. This Notice set a two-month period for reply.

In reply, applicant filed the a petition under 37 CFR 1.47(a) (and fee), paid the filing fees, and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a two month extension of time. Accompanying the petition were, *inter alia*,: (1) an affidavit from attorney Gregg Goldman, describing the efforts to obtain a signature from inventor Gawaine Lewis; (2) a copy of a cover letter from Goldman to Lewis, transmitting the application papers; and (3) a declaration for patent application signed by inventors Deborah Velez and Marco Santamaria.

However, the petition was dismissed in a decision mailed on May 28, 2002. Petitioner failed to submit a proper declaration for signing inventor Marco Santamaria, because the alteration to the address of Marco Santamaria was not dated and initialed or signed.[1]

On renewed petition, petitioner has submitted a proper

[1] "Any interlineation, erasure, cancellation or other alteration of the application papers...should be dated and initialed or signed by the applicant on the same sheet of paper." 37 CFR 1.52(c)(1).

declaration for inventor Santamaria.

The petition together with the declarations filed February 20, 2002 and July 8, 2002 have been reviewed and found to be in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in 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 returned to the Office of Initial Patent Examination for continuation 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Date Mailed : 12-14-09

Patent No.: 6,954,751 B2
Patent Issued : October 11, 2005
Inventor(s): Jacob Christfort, et. al.
Applicant No.: 09/948,135

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 1.322 or 1.323.

The alleged errors to the claim 1, col. 30, line 22 & 24 is a change made in an Examiner's Amendment at time of allowance. Since no error is involved and since applicant filed no objection prior to payment of the base issue fee, the request change will not be include d in the Certificate.

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

However, further consideration will be given upon receipt of a request for reconsideration directed to Decisions & Certificates of Correction Branch.

A certificate of correction will issue to correct the remaining error noted in your request.

Eva James
For Mary Diggs
Certificate of Correction Branch
(703) 308-9390 ext. 124 or ext. 125

Hickman Palermo Truong & Becker LLP
2055 Gateway Place, Suite 550
San Jose, CA 95110

ej

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PAPER NO.

BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
CHICAGO, IL 60610

COPY MAILED

JUN 0 6 2005

OFFICE OF PETITIONS

In re Patent No. 6,888,900	:	
Starr et al.	:	
Issue Date: May 3, 2005	:	LETTER REGARDING
Application No. 09/948,150	:	PATENT TERM ADJUSTMENT
Filed: September 6, 2001	:	
Attorney Docket No. 8285/443	:	

This is in response to the "COMMUNICATION RE PATENT TERM ADJUSTMENT," filed March 24, 2005. Applicants disclose that a terminal disclaimer was submitted in this application and thus, an adjustment of the patent term is not warranted.

The request for correction of the patent term adjustment (PTA) is **DISMISSED**.

Patentees are given **thirty (30) days** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

35 U.S.C. 154(b)(2)(B) provides that:

> No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

37 CFR § 1.703(g) provides that:

> No patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications[1], other than designs, filed on or after May 29, 2000. The Office calculates patent term

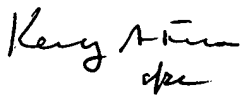
[1] Since a continued prosecution application (CPA) under § 1.53(d) is a new application, the filing of a CPA application on or after May 29, 2000, in an application filed before May 29, 2000 causes the application (CPA) to be eligible for patent term adjustment.

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. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

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



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

Paper No. 12

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

COPY MAILED

MAY 2 0 2002

OFFICE OF PETITIONS

In re Application of
Fudali, et al
Application No. 09/948,205
Filed: September 6, 2001
Attorney Docket No. P/2167-262

DECISION GRANTING
PETITION

This is a decision on the petition entitled, "Petition to Withdraw Notice of Omitted Items in a Non-Provisional Application," filed January 9, 2002 (certificate of mailing date November 30, 2001), requesting, in effect, partial withdrawal of the Notice to File Missing Parts of a Nonprovisional Application (Notice) . The petition will be treated under 37 CFR 1.53(e).

The application was deposited on September 6, 2001. On October 22, 2001, the Office of Initial Patent Examination mailed a Notice informing petitioners that drawing figures 1 and 2, described in the specification appeared to have been omitted. The Notice also required an executed oath/declaration, a surcharge for the late filing of the oath/declaration, and substitute drawings in compliance with 37 CFR 1.84.[1]

In response to the Notice, petitioners timely filed the present petition. Petitioners request that drawing figures 1 and 2 be accorded a filing date of September 6, 2001 on the basis that 10 sheets of drawing figures, including drawing figures 1 and 2, were received in the Patent and Trademark Office (PTO) on September 6, 2001. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing September 6, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 10 sheets of drawings.

The return postcard constitutes *prima facie* evidence that 10 sheets of drawing figures, including drawing figures 1 and 2, were filed on September 6, 2001. MPEP 503. Accordingly, the request is granted.

Pursuant to petitioners' request, the $130.00 petition fee will be credited to deposit account no. 15-0700.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of September 6, 2001, using the copies of drawing figures 1 and 2 submitted with the instant petition. Office records will be corrected to show that 10 sheets of drawings were present on filing.

---

[1] Petitioners submitted an executed declaration and the surcharge on February 20, 2001 (certificate of mailing date December 20, 2001) and substitute drawings in compliance with 37 CFR 1.84 on February 20, 2002.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy 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. 3

The Halvorson Law Firm
Ste. 1
405 W. Southern Ave.
Tempe, AZ 85282

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NOV 2 7 2001

OFFICE OF PETITIONS

In re Application of :
Brown :
Application No. 09/948,215 : ON PETITION
Filed: September 8, 2001 :
Attorney Docket No. 511-053 :

This is a decision on the petition filed October 18, 2001, to accord the above-identified application a filing date of September 7, 2001, instead of September 8, 2001.

Paragraph (c) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where there is a discrepancy between the filing date initially accorded by the Office and the "date-in" entered by the USPS. Paragraph (d) of 37 CFR 1.10 sets forth procedures for filing a petition for a filing date where the "date-in" is incorrectly entered or omitted by the USPS.

Petitioner has failed to provide evidence establishing the "date-in" entered by the USPS. Specifically, petitioner has failed to provide the PTO with a copy of the express mail label. Paragraph (b) of 37 CFR 1.10 provides,

> 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.

Since an express mail label has not been provided, petitioner has failed to establish the "date-in" entered by the USPS. Therefore, petitioner has failed to establish a discrepancy between the filing date accorded by the Office and the "date-in" entered by the USPS. In addition, petitioner has failed to establish that the "date-in" was incorrectly entered or omitted by the USPS.

Accordingly, 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 1.10." This is **not** 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: Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

If a request for reconsideration is not filed within two months, the file will be forwarded to Technology Center 1700 for examination in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HOFFMANN & BARON, LLP
6900 JERICHO TURNPIKE
SYOSSET NY 11791

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FEB 15 2005

OFFICE OF PETITIONS

In re Application of :
James H. Brown : DECISION GRANTING
Application No. 09/948,215 : PETITION
Filed: September 7, 2001 :
Attorney Docket No. 1370-4CON :

This is a decision on the petition filed on December 6, 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 file a timely and proper reply to the final Office action mailed April 21, 2004. This Office action set a shortened statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on July 22, 204. A Notice of Abandonment was mailed on November 3, 2004.

The application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of continuation application, No. 11/005,430, filed December 6, 2004.

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 $490.00 extension of time fee submitted with the petition on December 6, 2004, was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account No. 08-2461.

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

Christina Tartera Donnell

Christina Tartera Donnell
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

Michael S. Neustel
Suite No. 4
2534 South University Drive
Fargo ND 58103

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APR 2 8 2006

OFFICE OF PETITIONS

In re Application of :

FIORE et al. :
Application No. 09/948,230 : DECISION ON PETITION
Filed: September 7, 2001 : TO WITHDRAW
Attorney Docket No. FIOR-005 : 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 23, 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 Michael S. Neustel, the sole attorney of record. Michael S. Neustel has been withdrawn as an attorney or agent of record. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

The application became abandoned for failure to respond to an Office action mailed on October 20, 2005.

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

Denise Pothier
Petitions Examiner
Office of Petitions

cc: Anthony Fiore
11 Cobblestone Lane
Long Valley, NJ 07853

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

DAVIDSON, DAVIDSON & KAPPEL, LLC
485 SEVENTH AVENUE, 14TH FLOOR
NEW YORK NY 10018

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MAY 2 3 2002

OFFICE OF PETITIONS

In re Application of
Dufour, et al.
Application No. 09/948,232
Filed: September 7, 2001
Attorney Docket No. 600.1157
FOR: PRINTING PRESS WITH MULTIPLE-IMAGE-CARRYING CYLINDER

DECISION GRANTING PETITION

This is a decision on the petition entitled, "PETITION TO ESTABLISH PRIOR RECEIPT IN THE PTO OF ITEMS CONSIDERED AS OMITTED BY THE PTO - RESPONSE TO "NOTICE OF OMITTED ITEMS", filed October 23, 2001, requesting, in effect, withdrawal of the Notice of Incomplete Nonprovisional Application (Notice) . The petition will be treated under 37 CFR 1.53(e).

The application was deposited on September 7, 2001. On October 10, 2001, the Office of Initial Patent Examination mailed a Notice informing petitioners that no filing date had been accorded to the above-identified application because the application as filed did not include drawings.

In response to the Notice, petitioners timely filed the present petition. Petitioners request that the application be accorded a filing date of September 7, 2001 on the basis that 5 sheets of drawing figures were received in the Patent and Trademark Office (PTO) on September 7, 2001. In support, the petition is accompanied by a copy of applicants' itemized postcard receipt showing an Office of Initial Patent Examination generated barcode citing September 7, 2001 as the date of receipt. The postcard lists, *inter alia*, that the filing included 5 sheets of drawings.

The return postcard constitutes *prima facie* evidence that 5 sheets of drawing figures were filed on September 7, 2001. MPEP 503. Accordingly, the request is granted.

Pursuant to petitioners' request, the $130.00 petition fee will be credited to deposit account no. 50-0552.

The application is being returned to Office of Initial Patent Examination for further processing, with a filing date of September 7, 2001, using the copies of the 5 sheets of drawings submitted with the instant petition. Office records will be corrected to show that 5 sheets of drawings were present on filing.

Any inquiries pertaining to this matter may be directed to Petitions Attorney E. Shirene Willis at (703) 308-6712.

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

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 4/15/02

2 Serial/Patent # 09/948,232

	3 Please refund th following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
X	Petition	6	10/23/01	$ 130.00
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $ 130.00

8 TO BE REFUNDED BY:

	Treasury Check
	Credit Deposit A/C #:

9 5 0 -- 6 5 5 2.

10 REASON:

	Overpayment
	Duplicate Payment
X	No Fee Due (Explanation):

Our mistake. Items were present on filing

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: E. Shirene Willis TITLE: Petitions Attny

SIGNATURE: E. Shirene Willis PHONE: 308-6712

OFFICE: Office of Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Kelly DATE: 5-23-02

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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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 6

Samuel H. Dworetsky
AT&T Corp.
PO Box 4110
Middletown, NJ 07748-4110

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JAN 2 2 2002

OFFICE OF PETITIONS

In re Application of :
Kwok T. Fung et al. :
Application No. 09/948,268 : DECISION NOTING JOINDER OF
Filed: September 6, 2001 : INVENTOR AND PETITION
For: Architecture to Support Public Voice : UNDER 37 CFR 1.47(a) MOOT
VPN Services Over an IP Network :

This is in response to the petition under 37 CFR 1.47(a) filed on September 6, 2001 and Request for Reconsideration filed on December 13, 2001. The papers filed December 13, 2001, included a Declaration signed by previous non-signing inventors, Mr. Denny Ko and Mr. Fang Wu, in compliance with 37 CFR 1.63.[1]

In view of the joinder of the inventors, further consideration under Rule 1.47(a) is moot; 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 Rule 1.47(a).

The Declaration filed September 6, 2001 taken in combination with the Declaration filed January 3, 2002 will be accepted as complying with the provisions of 37 CFR 1.63.

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

[1]A facsimile transmission of the papers filed on December 13, 2001 were received on January 3, 2002.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Samuel H. Dworetsky
AT&T CORP.
P.O. Box 4110
Middletown NJ 07748-4110

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SEP 13 2007

OFFICE OF PETITIONS

In re Application of :
Fung, et al. :
Application No. 09/948,268 : ON PETITION
Filed: September 6, 2001 :
Attorney Docket No. 2000-0483 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 21, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

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

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed April 19, 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 July 20, 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). The instant petition lacks item (1).

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 19, 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)(II)(A)(2). The petition is not accompanied by the required reply. The amendment after final failed to place this application in *prima facie* condition for allowance. Please review the enclosed Advisory Action Before the Filing of an Appeal Brief for more details.

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

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

By Mail:
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) 272-3230.

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: THOMAS A. RESTAINO
AT&T CORP.
ROOM 2A-207
ONE AT&T WAY
BEDMINSTER NJ 07921

Enclosure: Advisory Action Before the Filing of an Appeal Brief

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/948,268	Applicant(s) FUNG ET AL.	
	Examiner Tongoc Tran	Art Unit 2134	

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

THE REPLY FILED 21 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1--8*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:
In response to Applicant's remarks on page 3, 3rd paragraph stating that cited prior art, Elliott , "fails to teach or suggest receiving a call in a VPN network from a customer VPN and routing the call to a gatekeeper along with an autonomous system (AS) number that uniquely identifies the customer VPN". Applicant further states that "a H.323 architecture having a gatekeeper is not the same as a VPN architecture having a gatekeeper, as taught by the Applicant's invention. For example, the H.323 protocol network architecture disclosed by Elliott is not intended to support VPN is depicted by Elliott in Fig. 16A. (see Elliott, col. 74, l. 35-col. 80, l. 56.) The network architecture supporting VPN illustrated in Fig. 16A is unrelated to H.323 protocol architecture illustrated in Fig. 58A. Notably, the packet switched network architecture supporting VPN taught by Elliot fails to teach or to suggest the use of a gatekeeper or routing the call to a gatekeeper along with an autonomous system (AS) number that uniquely identifies the customer VPN ". In Fig. 1 of Applicant's Specification, Applicant discloses calls from a customer in a VPN is route through a H.323 gatekeeper. Fig. 58A as Applicant points out depicts a block diagram of the H.323 architecture for a network-based communications system defining four major components, including terminals, gateways, gatekeepers, and multipoint control units. Examiner respectfully disagrees with Applicant's assertion that the the "H.323 protocol network architecture disclosed by Elliott is not intended to support VPN (See Elliott, Fig. 58A.) Rather, the network architecture supporting VPN is dected by Elliott in Fig. 16A (See Elliott, col. 74, l. 35-col. 80, l. 56)". Elliotts discloses "H.323 is an umbrella recommendation from the Internatinal Telecommunication Union (ITU) that sets standards for multimedia communication over Local Area Networks (LANs) that do not provide a guarantee Quality of Service (QoS). These networks dominate today's corporate desktops include packet-switched TCP/IP and IPX over Eterhnet, Fast Ethernet and Token Ring network technologies. Therefore, the H.323 standards are important building blocks for a broad range of collaborative, LAN-based applications for multimedia communications (col. 43, lines 45-54); "Gatekeepe 5808 is the most important component of an H.323 enabled network. It acts as the central point for all calls within its zone and provides call control services to registered endpoints. In many ways, an H.323 gatekeeper 5808 acts as a virtual switch. Gatekeepers 5808 perform two important call control functions. The first is address translation from LAN aliases for terminals and gateways to IP or IPX addresses as defined in the RAS specification, the second function is bandwidth managemnet, which is also designated within RAS. For instance, if a network manager has specified a threshold for the number of simultaneous conferences on the LAN, the Gatekeeper 5808 can refuse to make any more connections once the threhold is reached. The effect is to limit the total conferencing bandwidth to some fraction of the total available; the remaining capacity is left for e-mail, file transfers and other LAN protocols. Fig. 60 depicts a collection of all terminals, gateways 5806 and multipoint control units 59=812 which can be managed by a single gatekeeper 5808. This collection of elements is known as an H.323 Zone. An optional, but valuable feature of a gatekeeper 5808 is its ability to route H.323 calls. By routing a call through a gatekeeper, it can controlled more effectively. Service providers need this ability in order to bill for calls placed through their network. This service can also be used to re-route a call to another endpoint if a call endpoint is unavailable. In addition, a gatekeeper 5808 capabale of routing H.323 calls can help make decisions involving balancing among multiple gateways. For instance, if a call is routed through a gatekeeper 5808, that gatekeeper 5808 can then re-route the call to one of many gateways based on some proprietary routing logic. While a gatekeeper 5808 is logically separate from H.323 endpoints, vendors can incorporate gatekeeper 5808 functionality into the physical implementation of gateways 5806 and MCUs 5812: Gatekeeper 5808 is not required in an H.323 system. However, if a gatekeepr 5808 is present, terminals must make use of the services offered by gatekeepe 5808. RAS deines these as address translation admissions control bandwidth control, and Zone management. Gatekeepers 5808 can also play a role in multipoint connections. To support multipoint conferences, users would employs a Gatekeeper 5808 to receive H.245 Control Channels from terminals in point-to-point controller, the MC. Gatekeeper 5808 need not process the H.245 signaling; it only needs to pass it between the terminals 5808, 5804, 5808 or the terminals and the MC. LANs which contain Gateways 5806 could also contain a gatekeeper 5808, H.323 entities that contain an internal gatekeeper 5808 require a mechanism to disable the internal function so that when there are multiple H.323 entitles that contain a gatekeeper 5808 on a LAN, the entities can be configured int the same Zone (col. 44, line 65-col. 45, line 55). Therefore, in light of this teachings from Elliotts, Examiner agains asserts that althought the drawings does not clearly reflect a call in a VPN is routed through a H.323 gatekeeper to another VPN. Elliotts does not exclude communication between a data network (including VPN) and gateways using H.323 protocol. MOreover, Elliotts states that one of the important role of the H.323 gatekeeper is its ability to route H.323 calls and the H.323 gatekeeper's functionality can be incorporated into the physical implementation of the gateway 5806 and MCUs 5812. In response to Applicant's remarks that the second cited prior art, "DeFerranti fails to bridge the substantial gap left by Elliott. DeFerranti teaches that the IP Exchange obtained an Autonomous System number and blocks of IP addresses from the appropriate IP Address body. (See DeFerranti, para [0168]) DeFerranti further teaches that the IP exchange can allocate an P address range to the buyer. (See id.). Furthermore, DeFerranti states that "the core router has BGP 4 sessions with the three sellers networks." (See DeFerranti, Paragraph 0167). Thus the Sellers and Buyers are separate and real networks. They are not VPNs. Examiner notes that in paragraph 0174, DeFerranti discloses "the ranges of Cisco and Juniper routers both support Multi Protocol Label Switching (MPLS) for operating VLAN and Virtual Private Networking (VPN) across various hardware forming the IP Exchange. Furthermore, DeFerranti discloses "[t]he routing device may comprise a switch. In an implementation, the first and second users are each connected to the switch via respective first and second user routers, wherein the first and second network service providers are each connected to the switch via respective first and second Virtual Private Network (VPN) connection between the first user router and at least one first target router selected from said provider routers based on network service rpovider preference data for the first user and to provide a second Virtual Private Network (VPN) connection between the second user router and at least one second target router selected from said provider routers based on network service provider prference data for the second user..." (paragraph [0031]). Applicant further states that "even if DeFerranti is broadly interpreted as using an autonomous System number, the combination of Elliott and DeFerranti would only teach a packet switched network architecutre that can obtain an Autonomous System number without a gatekeeper". However, as pointed out above, Elliott states that if a gatekeeper is present the terminal must make user of the gatekeeper and one of its important role is routing call from one point to another. DeFerranti also indicates that routing devices comprises autonomous systems and a buyer and seller typically have an autonomous system number when exchanging communication with other vpn network. Therefore, Examiner maintains that Elliotts in view of Deferranti in combination render the claimed independent claims obvious.

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ONE AT&T WAY
BEDMINSTER NJ 07921

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JAN 2 2 2008

OFFICE OF PETITIONS

In re Application of :
Fung, et al. :
Application No. 09/948,268 : ON PETITION
Filed: September 6, 2001 :
Attorney Docket No. 2000-0483 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed November 13, 2007, 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 April 19, 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 July 20, 2006. A petition under 37 CFR 1.137(b), filed February 21, 2007, was dismissed on September 13, 2007 for failure to file a proper reply.

Applicants have submitted a RCE and required fee in reply to the April 19, 2006 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the April 19, 2006 final Office action, and the petition fee.

It is not apparent whether the person signing the renewed petition and thereby making a statement of unintentional delay for a portion of the delay period 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, practitioner 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, practitioner 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.

After the mailing of this decision the application will be forwarded to Technology Center AU 2134 for consideration of the RCE filed on November 13, 2007.

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

CC: KIN-WAH TONG
PATTERSON & SHERIDAN, LLP
595 SHREWSBURY AVENUE
SHREWSBURY, NJ 07702

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THE LAW OFFICE OF IDO TUCHMAN
ECM #72212
P.O. Box 4668
New York, NY 10163-4668

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OFFICE OF PETITIONS

In re Application of :
Michiharu Kudoh, et. al. :
Application No. 09/948,286 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. JP920000143US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed on November 14, 2007, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowability mailed June 22, 2007. A Notice of Abandonment was mailed on October 22, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of one sheet of replacement drawing containing Figure 9; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, 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.

This application file is being referred to the Office of Data Management 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

cc: Ido Tuchman
Law Office of Ido Tuchman
82-70 Beverly Road
Kew Gardens, NY 11415

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,872,077	2005-03-29	09/948,317	2001-09-06	0109517.0539135

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	/Jeffrey F. Kersting/	Date (YYYY-MM-DD)	2009-05-21
Name	Jeffrey F. Kersting	Registration Number	63100

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Patent No. 6872077
Issue Date: March 29,2005
Application No. 09948317
Filed: September 6,2001
Attorney Docket No. 65N-81164

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

This is a decision on the electronic petition, filed May 21,2009 ,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 May 21,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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Director's Office
Office of Patent Publication

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

In re Application of :
BOU-GHAZALE, SAHAR E. :
Application No. 09/948,331 : DECISION ON PETITION
Filed: September 5, 2001 :
Attorney Docket No. 01CON210P :

This is a decision on the Petition To Withdraw Holding Of Abandonment under 37CFR 1.181, received in the United States Patent & Trademark Office (USPTO) on April 13, 2006.

The petition is **DISMISSED**. Any request for reconsideration of this decision, or as explained below, filing a petition seeking revival under 37 CFR § 1.137, must be filed within TWO (2) MONTHS from the mail date of this decision.

The above-identified application was held abandoned for applicant's failure to timely pay the issue fee, as required in the Notice of Allowance and Fee(s) Due mailed November 03, 2005. The Notice of Abandonment, mailed on March 28, 2006 indicates, "The submitted fee of $0 is insufficient. A balance of $1,400 is due."

The Office acknowledges receipt of Part B – Fee(s) Transmittal on December 13, 2005, authorizing that the Issue Fee be charged to Deposit Account No. 50-1867. On December 13, 2005, when an attempt was made by the Office of Finance to charge the fees, there were insufficient funds in the Deposit Account to charge the required fee.

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

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

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

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

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

Further inquires with respect to filing a petition under 37 CFR § 1.137 may be directed to the Office of Petitions at 571-272-3282 or addressed as follows:

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

Telephone inquires concerning this decision matter may be directed to the undersigned at 703 308-9250 Ext. 163.

Nina Motley

Nina D. Motley
Quality Operations Assistant
Office of the Director
Office of Patent Publications

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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OFFICE OF PETITIONS

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

In re Application of :
Sahar E. Bou-Ghazale, et al. :
Application No. 09/948,331 : ON PETITION
Filed: September 5, 2001 :
Attorney Docket No. 01CON210P :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed December 4, 2006.

The petition is **GRANTED**.

The application became abandoned for failure to pay the issue fee on or before February 3, 2006. A Notice of Abandonment was mailed on March 28, 2006. 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 the requisite issue/publication fee; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay.

The application is being referred to the Office of Publications to be processed into a patent.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to processing at Publishing Division should be directed to (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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Paper No. 8

AGILENT TECHNOLOGIES, INC.
LEGAL DEPARTMENT, DL429
INTELLECTUAL PROPERTY ADMINISTRATION
P.O. BOX 7599
LOVELAND CO 80537-0599

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OFFICE OF PETITIONS

In re Application of
Laura Elisabeth Simmons et al.
Application No. 09/948,343
Filed: September 5, 2001
Attorney Docket No. 10004130-1

ON PETITION

This is a decision on the petition filed on December 22, 2003 under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application or alternatively under 37 CFR 1.137 (b).

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

The petition under 37 CFR 1.137 (b) is **DISMISSED** as involving a moot issue.

The application was held abandoned on December 11, 2001, for failure to timely respond to a Notice to File Corrected Application Papers mailed October 10, 2001. Accordingly, a Notice of Abandonment was mailed December 1, 2003.

Petitioner asserts that eight sheets of drawings in response to the Notice were filed with a certificate of mailing on December 7, 2001.

In support, petitioner has submitted, a copy of the Drawing Transmittal Letter and copies of the drawings asserted to have been timely filed with the certificate of mail on October 7, 2001.

A search of the application file and the USPTO records does not reveal receipt of the drawings but, the petition complies with the requirements set forth in 37 CFR 1.8(b).

Accordingly, the Notice of Abandonment mailed on August 8, 1998, is hereby withdrawn.

In view of the above, there is no need to treat the petition under the unintentional standard of review, 37 CFR 1.137 (b), and thus, Deposit Account No. 50-1078 will be credited in the amount of $1330.00 for petition fee.

The application file is being forwarded to the Office of Initial Patent Examination for examination in due course.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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BRINKS HOFER GILSON & LIONE/MARVELL
P O BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Application of :
Laura Elisabeth Simmons et al :
Application No. 09/948,343 : DECISION GRANTING PETITION
Filed: September 5, 2001 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 13036/11 (MP0970) :

This is a decision on the petition, filed August 4, 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 September 9, 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 2853 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement.

Frances Hicks
Petitions Examiner
Office of Petitions

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

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Paper No. 6

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FEB 2 1 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

JOHN W.L. OGILVIE
COMPUTER LAW
1211 EAST YALE AVE
SALT LAKE CITY, UT 84105

In re Application of :
John W.L. Ogilvie :
Application No. 09/948,354 :
Filed: September 8, 2001 :
For: TOOLS AND TECHNIQUES FOR READER-GUIDED INCREMENTAL IMMERSION IN A FOREIGN LANGUAGE TEXT

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the copy of a Petition under MPEP § 708.02, filed January 10, 2002, to make the above-identified application special.

A grantable petition to make special in accordance with M.P.E.P. § 708.02, Item VIII, must be accompanied by (a) the fee set forth in 37 C.F.R. § 1.17(h), (b) a statement that all claims are directed to a single invention or an offer to make an oral election without traverse should the Patent and Trademark Office hold that the claims are not directed to a single invention, (c) a statement that a pre-examination search has been made by the inventor, attorney, agent, professional searcher, etc., and a listing of the field of search by class and subclass, (d) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims, and (e) a detailed description of the submitted references and discussions pointing out how the claimed subject matter is distinguishable over these references.

For the above stated reasons, the petition is **GRANTED**.

The application will retain its special status throughout its entire course of prosecution in the Patent and Trademark Office, including appeal, if any to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application file will be forwarded to the examiner for expedited prosecution.

Reinhard Eisenzopf
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

COOLEY GODWARD LLP
ATTN: PATENT GROUP
FIVE PALO ALTO SQUARE
3000 EL CAMINO REAL
PALO ALTO CA 94306-2155

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APR 1 2 2002

OFFICE OF PETITIONS

In re Application of :
Donald B. Borders et al :
Application No. 09/948,374 : DECISION GRANTING PETITION
Filed: September 6, 2001 : UNDER 37 CFR 1.137(f)
Attorney Docket No. 8067-089-999 :

This is a decision on the petition filed March 19, 2002 and supplemented on March 25, 2002, to revive the instant nonprovisional application under the unintentional provisions of 37 CFR 1.137(f).

The petition is **granted**.

This application became abandoned pursuant to 35 USC 122(b)(2)(B)(iii) 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;[1] (2) the petition fee as set forth in 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

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

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[1] The filing of a petition under this section will not relieve applicant of his obligation to reply to any outstanding Office action.

A Corrected Filing Receipt which sets forth the projected publication date of July 18, 2002, accompanies this decision on petition.

This application is being forwarded to Technology Center 1600, Art Unit 1653, for examination in due course.

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

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 5

Dara L. Onofrio, Esq.
c/o ONOFRIO LAW
Suite 2702
233 Broadway
New York NY 10279-2799

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MAY 0 8 2002

OFFICE OF PETITIONS

In re Application of
Smith, Schaffer, Jackson, Balder & D'Urso
Application No.: 09/948,382
Filed: September 6, 2001
Attorney Docket No.:IP 6101
For: REINFORCING STRIPS FOR CORRUGATED PAPERBOARD AND RELATED METHOD AND APPARATUS FOR ITS MANUFACTURE

DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed January 18, 2002 (certificate of mailing date December 20, 2001).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 6, 2001 without an executed oath or declaration. Accordingly, on October 9, 2001, a "Notice to File Missing Parts of Application" (Notice) was mailed, requiring an executed oath or declaration and a surcharge for its late filing. In addition, the Notice required substitute drawings in compliance with 37 CFR 1.84.

In response, on January 18, 2002 (certificate of mailing date December 20, 2001), a petition for a one month extension of time and required fee, 24 sheets of substitute drawings/black and white photographs, a declaration executed by 3 of 5 joint inventors, the surcharge, the petition fee, and the instant petition were filed. The petition states that non-signing joint inventors Ronald Schaffer and George D'Urso were each mailed a copy of the declaration for the above-identified application, but they did not respond to the request that they sign the declaration for the patent application.

A grantable petition under 37 CFR 1.47(a) requires

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

This petition lacks item (1).

As to item (1), Applicants have failed to establish that the inventors have refused to sign the declaration or cannot be found. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventors be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). The petition does not establish that a complete copy of the application was mailed to the non-signing inventors' respective last known address.

Messrs. Schaffer and D'Urso must have the complete application in their possession in order to make an informed decision as to whether they join in its filing. When petitioners can show that Messrs. Schaffer and D'Urso were mailed or received the complete application and that they either orally or in writing refused to sign the declaration or would not respond to the request that they sign the declaration, petitioner will have shown refusal.

If petitioners wish to establish that the non-signing inventors cannot be found, a copy of the application papers should be sent to their respective last known address with a request that they sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned, **and** other attempts to locate the inventor, (e.g.: e-mail; Internet (LEXIS); telephone directory searches) continue to fail, then applicants will have established that the inventors cannot be reached.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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

E. Shirene Willis

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

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

DARA L ONOFRIO
ONOFRIO LAW
1133 BROADWAY
SUITE 1600
NEW YORK NY 10010

COPY MAILED

JUN 2 6 2002

OFFICE OF PETITIONS

In re Application of
Smith, Schaffer, Jackson, Balder & D'Urso
Application No.: 09/948,382
Filed: September 6, 2001
Attorney Docket No.:IP 6101
For: REINFORCING STRIPS FOR CORRUGATED PAPERBOARD AND RELATED METHOD AND APPARATUS FOR ITS MANUFACTURE

DECISION RESTARTING PERIOD FOR REPLY

This is a decision on the petition under 37 CFR 1.181(a), filed June 13, 2002, to restart the two month period for reply to the May 8, 2002 dismissal under 37 CFR 1.47(a).

The petition is **GRANTED**.

Applicants filed a petition under 37 CFR 1.47(a) on January 18, 2002 (certificate of mailing date December 20, 2001). This petition was dismissed on May 8, 2002 for failure to establish that Messrs. Schaffer and D'Urso, the non-signing inventors, each possessed a complete copy of the application papers when they were asked to sign their respective copy of the declaration/power of attorney.

The decision was mailed to:

Dara L. Onofrio, Esq.
c/o ONOFRIO LAW
Suite 2702
233 Broadway
New York NY 10279-2799

However, Attorney Onofrio requested that the USPTO change address and contact information for all cases handled by attorneys associated with customer number 25230 in March of 2002. The request to change address and contact information, as it pertains to the above-identified application, was entered into USPTO computer systems on June 17, 2002. Unfortunately, the decision of May 8, 2002 was mailed to the former address of record.[1]

Therefore, the 2 month period for reply to the May 8, 2002 dismissal will run from the mail

[1] Petitioners are urged to utilize Express Mail, rather then FedEx in the future. The undersigned contacted the Electronic Business Center to ascertain the receipt date of the FedEx package. Fortunately, the EBC could confirm that the package arrived on March 22, 2002. If this PTO confirmation had not been available, the outcome of this decision might not have been favorable to petitioners.

date of this decision. For petitioners' convenience, a copy of the May 8, 2002 decision is enclosed. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventors. **Failure to respond will result in abandonment of the application.**

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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

E. Shirene Willis

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

enclosure: copy of May 8, 2002 decision

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RONALD SCHAFFER
1558 CROSSING LANE
NESBIT, MS 38657

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NOV 1 4 2002

OFFICE OF PETITIONS

In re Application of
Smith, Schaffer, Jackson, Balder & D'Urso
Application No.: 09/948,382
Filed: September 6, 2001
Attorney Docket No.:IP 6101
For: REINFORCING STRIPS FOR CORRUGATED PAPERBOARD AND RELATED METHOD AND APPARATUS FOR ITS MANUFACTURE

LETTER

Dear Mr. Schaffer:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

ATTORNEY OF RECORD: DARA L ONOFRIO
ONOFRIO LAW
1133 BROADWAY
SUITE 1600
NEW YORK NY 10010

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 13

DARA L ONOFRIO
ONOFRIO LAW
1133 BROADWAY
SUITE 1600
NEW YORK NY 10010

COPY MAILED

NOV 14 2002

OFFICE OF PETITIONS

In re Application of
Smith, Schaffer, Jackson, Balder & D'Urso
Application No.: 09/948,382
Filed: September 6, 2001
Attorney Docket No.:IP 6101
For: REINFORCING STRIPS FOR CORRUGATED PAPERBOARD AND RELATED METHOD AND APPARATUS FOR ITS MANUFACTURE

DECISION ACCORDING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed September 30, 2002 (certificate of mailing date September 25, 2002).

The petition is granted.

Petitioners have shown that the non-signing inventor, Ronald Schaffer has constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration/statement of facts of Mary M. Harris establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration. Petitioners have submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

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 inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to Technology Center 3700 for examination in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

MAR 28 2005

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

In re Application of	:	
Susanna M. Rybak et al	:	NOTICE OF WITHDRAWAL
Serial No. 09/948,391	:	FROM ISSUE
Filed: September 6, 2001	:	UNDER 37 CFR 1.313(b)
For: RECOMBINANT ANIT-TUMOR RNASE	:	

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

The above-identified application is hereby withdrawn from issue.

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

Telephone inquiries should be directed to Jeff Siew at (571) 272-0787.

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

Bruce M. Kisliuk
Director, Technology Center 1600

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
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OLIFF & BERRIDGE, PLC
P.O. BOX 19928
ALEXANDRIA, VA 22320

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SEP 1 2 2003

OFFICE OF PETITIONS

In re Application of :
Tsuyoshi Maeda et al : ON PETITION
Application No. 09/948,428 :
Filed: September 12, 2001 :
Attorney Docket No. 110304

This is a decision on the petition, filed September 11, 2003, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on August 7, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

After receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2871 for processing of the request for continued examination under 37 CFR 1.114.

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

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

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

COPY MAILED

APR 0 9 2004

OFFICE OF PETITIONS

In re Application of :
Joshua Z. Beadle :
Application No. 09/948,435 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 47018/259081 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 22, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed October 6, 2003, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on January 7, 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 payment of the issue fee; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue fee is accepted as having been unintentionally delayed.

The statement claiming small entity status in accordance with 37 CFR 1.27 embodied in the petition under 37 CFR 1.137(b) has been made of record and small entity status has been accorded.

The Change of Correspondence Address has been accepted and recorded.

The application file is being forwarded to the Publishing Division for further processing.

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

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE SONI LAW FIRM
55 S. LAKE AVE., SUITE 720
PASADENA, CA 91101

COPY MAILED

SEP 2 2 2004

OFFICE OF PETITIONS

In re Application of :
Yuet Leung So et al :
Application No. 09/948,449 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. SUN-01 :

This is a decision on the paper filed July 13, 2004, which is being treated as a petition 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 in a timely manner to the final Office action mailed November 17, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 18, 2004.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $475 and $130 fees submitted with the petition on July 13, 2004 was subsequent to the maximum extendable period for reply, petitioner may request a refund of these fees by writing the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

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

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

The application is being forwarded to Technology Center AU 2876 for further processing.

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

Docket No.: 52637-0025

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Confirmation No.: 9467

Bijan Treister, et al. Examiner: Hanh Nguyen

Serial No.: 09/948,499/ Patent No.: 7,570,614 Group Art Unit No.: 2416

Filed: 09/06/2001/ Issued: 08/04/2009

For: APPROACH FOR MANAGING COMMUNICATIONS CHANNELS BASED ON PERFOMANCE

REQUEST FOR CERTIFICATE OF CORRECTION

Via EFS OK TO ENTER: /H.N./ 11/17/09
Commissioner for Patents
Alexandria, VA 22313-1450

Sir:

Enclosed herein is a proposed Certificate of Correction. The Certificate of Correction corrects errors in claims 15, 25, 30, 36, 54, 55, 56, 57, 58, 59, 60, 61 and 66.

The correction puts these claims in the form as originally presented and as subsequently amended, if amended. Therefore, the record makes clear that this correction corrects an error, and that the error is the fault of the PTO. Hence, no fee is required.

It is respectfully requested that the Certificate of Correction be issued.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP

Dated: October 19, 2009

/Samuel S. Broda #54802/
Samuel S. Broda
Registration No. 54,802

2055 Gateway Place, Suite 550
San Jose, CA 95110-1089
Tel: (408) 414-1080 ext. 239
Fax: (408) 414-1076

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,570,614 B2
APPLICATION NO. : 09/948,499
ISSUE DATE : August 4, 2009
INVENTOR(S) : Bijan Treister, et al.

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

Column 34
Claim 15: Line 9, delete "communication" and insert --communications--

Column 35
Claim 25: Line 37, delete "communication" and insert --communications--

Column 36
Claim 30: Line 26, delete "communication" and insert --communications--

Column 37
Claim 36: Line 18, delete "communication" and insert --communications--

Column 41
Claim 54: Line 17, delete "52" and insert --53--

Column 41
Claim 55: Line 20, delete "52" and insert --53--

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Hickman Palermo Truong & Becker LLP
2055 Gateway Place, Suite 550
San Jose, CA 95110-1089

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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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,570,614 B2

APPLICATION NO. : 09/948,499

ISSUE DATE : August 4, 2009

INVENTOR(S) : Bijan Treister, et al.

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

Column 41
Claim 56: Line 33, delete "52" and insert --53--

Column 41
Claim 57: Line 41, delete "52" and insert --53--

Column 41
Claim 58: Line 66, delete "52" and insert --53--

Column 42
Claim 59, Line 10, delete "52" and insert --53--

Column 42
Claim 60: Line 20, delete "52" and insert --53--

Column 42
Claim 61: Line34, delete "52" and insert --53--

Column 43
Claim 66: Line 29, delete "52" and insert --53--

MAILING ADDRESS OF SENDER (Please do not use customer number below):
Hickman Palermo Truong & Becker LLP
2055 Gateway Place, Suite 550
San Jose, CA 95110-1089

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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UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/948,499	09/06/2001	Bijan Treister	52637-0025	9467

29989 7590 11/18/2009

HICKMAN PALERMO TRUONG & BECKER, LLP
2055 GATEWAY PLACE
SUITE 550
SAN JOSE, CA 95110

EXAMINER	
NGUYEN, HANH N	

ART UNIT	PAPER NUMBER
2416	

MAIL DATE	DELIVERY MODE
11/18/2009	PAPER

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20091117

DATE : November 18, 2009

TO SPE OF : ART UNIT 2473

SUBJECT : Request for Certificate of Correction on Patent No.: 7,570,614

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: /Kwang B. Yao/ **Art Unit** 2473

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700

Mailed: 1-12-06

MEB
Paper Number:

In re application of :
Peter Trefonas, et al. : DECISION ON
Serial No. 09/948,526 : PETITION
Filed: September 8, 2001 :
For: Novel Polymers And Photoresist Compositions For Short Wavelength Imaging

This is a response to the PETITION TO WITHDRAW ABANDONMENT, filed February 8, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of December 8, 2004, for failure to timely reply to the office action of January 14, 2004 be withdrawn. The petitioner asserts that the response was timely filed by mail on March 15, 2004, with the appropriate Certificate of Mailing, stamped postcard receipt, and extension of time.

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 a Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed.

As set forth in MPEP 711.03(c), 37 CFR 1.10(c) through 1.10(e) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), or (e) (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

Similarly, applicants may establish that a reply was filed with a postcard receipt that properly identifies the reply and provides prima facie evidence that the reply was timely filed. See MPEP § 503. For example, if the application has been held

abandoned for failure to file a reply to a first Office action, and applicant has a postcard receipt showing that an amendment was timely filed in response to the Office action, then the holding of abandonment should be withdrawn upon the filing of a petition to withdraw the holding of abandonment. When the reply is shown to have been timely filed based on a postcard receipt, the reply must be entered into PALM using the date of receipt of the reply as shown on the post card receipt. Where a certificate of mailing or transmission under 37 CFR 1.8, but not a postcard receipt, is relied upon in a petition to withdraw the holding of abandonment, see 37 CFR 1.8(b) and MPEP § 512. 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). When the correspondence is shown to have been timely filed based on a certificate of mailing, the correspondence is entered into PALM with the actual date of receipt (i.e., the date that the duplicate copy of the papers was filed with the statement under 37 CFR 1.8).

The petitioner's showing with the response having the appropriate Certificate of Mailing, stamped postcard receipt, and extension of time is sufficient. The application will be forwarded to the examiner for processing and consideration of the papers filed March 15, 2004, by mail and a copy of which is provided as an attachment to the instant petition.

The Petition is **Granted**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Peter F. Corless
Edwards & Angell, LLP
P.O. Box 55874
Boston, Massachusetts 02205

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20071116

DATE : February 11, 2008

TO SPE OF : ART UNIT 2134

SUBJECT : Request for Certificate of Correction on Patent No.: 09/948,552

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:

KAMBIZ ZAND
SUPERVISORY PATENT EXAMINER

SPE: Kambiz Zand **Art Unit** 2134

UNITED STATES PATENT AND TRADEMARK OFFICE

#22

Commissioner for Patents
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James C. Wray
Suite 300
1493 Chain Bridge Road
McLean, VA 22101

January 31, 2006

MAILED
FROM DIRECTORS OFFICE

FEB 0 1 2006

TECHNOLOGY CENTER 3600

In re application of
Julia Valles Camps, et al.
Application No. 09/948,601
Filed: 09/10/2001
For: BIODEGRADABLE FUNERARY URN

DECISION ON PETITION TO RESTART PERIOD FOR REPLY AND PROVIDE A TRANSLATION

The reply brief filed on December 8, 2003 is being construed as a petition to invoke the supervisory authority of the Director under 37 CFR 1.181. The petition, which requires the examiner to provide a translation of the foreign reference used in the rejection, is addressed below.

The petition is **DENIED**.

A review of the record reveals that a final Office action was issued using Japanese reference JP-03272762 in a 35 U.S.C. 102(b) rejection and in a 35 U.S.C. 103(a) rejection. As set forth in these rejections, the Japanese reference is relied on to disclose and/or teach the limitation of the funerary urn being molded of a biodegradable material, namely gelatin material and other materials having similar biodegradable characteristics and excluding contact adhesives and artificial varnishes. This limitation is disclosed and/or taught by the Japanese reference in its Derwent abstract (previously provided to the applicant) which clearly states the molding material for the biodegradable urn is a mixture of casein and carboxyl methyl cellulose, and this mixture is 95% weight gelatin. Thus, no translation of the reference was obtained.

MPEP 706.02 states:
"To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection...When both the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it

may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) ***may*** [emphasis added] be supplied in the next Office action."

Applicant has interpreted the above language in the MPEP to mean that a translation *must* be sent to the applicant to make the record clear. However, there is no requirement that a translation must be obtained (and provided to the applicant) when the record is clear as to the precise facts the examiner is relying upon to support a rejection. Clearly, nowhere in the MPEP does it state that providing a translation of a foreign document used in a rejection, to the applicant, is matter of right, but at the discretion of the examiner. The MPEP merely states, "...a translation must be obtained so that the record is clear..." The type of translation is not specified, (i.e., self translation, oral translation, machine translation, written translation). In this instance, it was deemed sufficient that the translation provided in the Derwent abstract was sufficient to make the record clear.

The record is clear as to the precise facts the examiner is relying upon to support the rejections. In this case, examiner is relying on the Derwent abstract (previously provided to the applicant) and the figures of the Japanese reference. The facts relied upon by the examiner were clearly presented in the final rejection and consistent with the Japanese document and Derwent abstract provided to the applicant. A review of the record fails to reveal an error or defect in the rejection, which would require remailing of an Office action with a translation. The Japanese document and Derwent abstract provide an adequate understanding of the reference, as relied upon by the examiner. Since the examiner has clearly explained the contents of the Japanese reference in support of the rejection, and the Derwent abstract clearly discloses support for the limitations relied on for rejection of the claims, the final action is deemed proper.

SUMMARY:

The petition is DENIED as to the providing a translation of the foreign reference.

Donald T. Hajec
Patent Technology Center 3600
(571) 272-5150

JJS: 1/31/06

UNITED STATES PATENT AND TRADEMARK OFFICE

#24

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FROM DIRECTORS OFFICE

DEC 22 2006

TECHNOLOGY CENTER 3600

In re application of
Julia Valles Camps, et al.
Application No. 09/948,601
Filed: 09/10/2001
For: BIODEGRADABLE FUNERARY URN

DECISION ON PETITION TO RESTART PERIOD FOR REPLY AND PROVIDE A TRANSLATION

This is a decision on the request for reconsideration filed on April 25, 2006 (Paper 24) of the petition decision mailed on February 1, 2006 (Paper 22). The original petition, filed December 8, 2003, which argues the examiner must provide a translation of the foreign reference used in the rejection, is revisited and addressed below.

The petition is DENIED.

A second review of the record maintains that a final Office action was issued using Japanese reference JP-03272762 in a 35 U.S.C. 102(b) rejection and in a 35 U.S.C. 103(a) rejection. As set forth in these rejections, the Japanese reference is relied on to disclose and/or teach the limitation of the funerary urn being molded of a biodegradable material, namely gelatin material and other materials having similar biodegradable characteristics and excluding contact adhesives and artificial varnishes. This limitation is disclosed and/or taught by the Japanese reference in its Derwent abstract (previously provided to the applicant) which clearly states the molding material for the biodegradable urn is a mixture of casein and carboxyl methyl cellulose, and this mixture is 95% weight gelatin. Thus, no translation of the reference was obtained.

Regarding the request for reconsideration, the applicant argues the decision on petition (Paper 22) does not mention the fact the examiner cites page 3, line 20, through page 4, line 4, of the translation in the examiner's answer (Paper 14), and thus does not rely only on the Derwent abstract of the Japanese reference. While it is agreed the above passage of the translation was cited in the examiner's answer, this cited passage is not required to disclose and/or teach the claim limitations and is redundant with respect to the subject matter disclosed in the Derwent abstract.

Regarding the request for reconsideration, the applicant argues the decision on petition incorrectly takes the language of MPEP 706.02 out of context, emphasizing "may" (see decision, page 2, line 3).

MPEP 706.02 states:
"To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection...When both the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) ***may*** [emphasis added] be supplied in the next Office action."

The term "may" has not been taken out of context, but is emphasized as evidence of the lack of a mandatory requirement of the examiner providing a full translation of a foreign reference prior to appeal. There is no requirement that a translation must be obtained (and provided to the applicant) when the record is clear as to the precise facts the examiner is relying upon to support a rejection. Clearly, nowhere in the MPEP does it state that providing a translation of a foreign document used in a rejection, to the applicant, is matter of right, but at the discretion of the examiner. The MPEP merely states, "...a translation must be obtained so that the record is clear..." The type of translation is not specified, (i.e., self translation, oral translation, machine translation, written translation). In this instance, it was deemed sufficient that the translation provided in the Derwent abstract was sufficient to make the record clear.

As previously decided, the record is clear as to the precise facts the examiner is relying upon to support the rejections. In this case, examiner is relying on the Derwent abstract (previously provided to the applicant) and the figures of the Japanese reference. The facts relied upon by the examiner were clearly presented in the final rejection and consistent with the Japanese document and Derwent abstract provided to the applicant. While it is acknowledged a passage of the translation was first cited in the examiner's answer, this citation does not constitute a new ground of rejection as implied by the applicant as the cited passage is not required to disclose and/or teach the claim limitations and is redundant with respect to the subject matter disclosed in the Derwent abstract. A review of the record fails to reveal an error or defect in the rejection which would require remailing of an Office action with a translation. The Japanese document and Derwent abstract provide an adequate understanding of the reference, as relied upon by the examiner. Since the examiner has clearly explained the contents of the Japanese reference in support of the rejection, and the Derwent abstract clearly discloses support for the limitations relied on for rejection of the claims, the final action is deemed proper.

SUMMARY:

The petition is DENIED as to the providing a translation of the foreign reference. Any questions regarding this decision should be directed to SPE Judy Swann at 571-272-7075.

Donald T. Hajec
Patent Technology Center 3600
(571) 272-5150

JJS/snm: 12/07/06

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#27

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JUN 13 2007

TECHNOLOGY CENTER 3600

James C. Wray
Suite 300
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McLean, VA 22101

May 22, 2007

In Re application of
Julia Valles Camps, et al.
Application no. 09/948,601
Filed: 09/10/2001
For: BIODEGRADABLE FUNERARY URN

: DECISION OF PETITION TO
: RECONSIDER PETITION
: DECISION

DECISION ON REQUEST FOR RECONSIDEARTION OF DECISION ON PETITION

This is a decision on the request for reconsideration filed on January 03, 2007 (Paper 27) of the petition decision mailed on December 22, 2006 (Paper 26).

The petition is GRANTED IN PART.

Regarding the instant request for reconsideration, the applicant desires the following:

1) reconsideration of the petition decision;
2) the providing of a complete translation of the applied Japanese reference; and
3) restarting of the period of reply for a reply brief.

Regarding the above request for reconsideration of the petition decision, the applicant argues the petition decision included an incorrect statement concerning the urn composition described in the Derwent abstract. Discussion of the reference, and what it does or does not contain is an appealable matter, not a petitionable matter and will therefore not be addressed in this decision.

Regarding the above request for a translation, a copy of the complete translation of the Japanese reference was forwarded to the applicant with the examiner's answer mailed November 06, 2003 (Paper 14). In any event, a second copy of the complete translation of the Japanese reference is attached hereto.

Regarding the above request to restart the period of reply, the examiner acknowledges a supplemental examiner's answer is required to cure the deficiency identified in the Board remand dated May 05, 2006. As indicated by the applicant, this forthcoming supplemental examiner's answer will restart the period of reply for a reply brief as indicated by the applicant.

SUMMARY: Discussion of the reference is appealable subject matter and will therefore not be addressed. The request to supply a translation and restart the period is GRANTED.

The file is being forwarded to the examiner for preparation of a Supplemental Examiner's Answer.

Any questions regarding this decision should be directed to SPE Judy Swann at 571-272-7075.

Donald T. Hajec
Patent Technology Center 3600
(571) 272-5150

JJS: 05/22/07

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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March 29, 2004

Steven Cahill
Townsend and Townsend and Crew
Two Embarcadero Center, Eighth Floor
San Francisco, CA 94111-3834

In re application of
Peter Rabkin, et al DECISION ON PETITION
Serial No.: 09/948,612
Filed: September 7, 2001
For: NON-VOLATILE MEMORY CELL WITH NON-UNIFORM SURFACE FLOATING GATE AND CONTROL GATE

This is a decision on the petitions received by fax on January 14, 2004 and March 23, 2004, 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 October 10, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned December 11, 2001. The notice of abandonment was mailed November 21, 2003.

On March 23, 2004, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney responded to the Notice to File Missing Parts on November 16, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts on November 16, 2001.

The petition is hereby GRANTED.

The application will be completed with the documents received on March 23, 2004 and released to Technology Center 2818.

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

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

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Application of Tetsuya SATOU	:
	: DECISION GRANTING PETITION
Application No. 09/948,668	: TO REMAIL AN OFFICE
Filed: September 10, 2001	: COMMUNICATION AND RESTART
Attorney Docket No. 01607/1279	: PERIOD FOR REPLY

This is a decision on the petition filed on February 11, 2002, requesting that the Office communication mailed on October 16, 2001 be remailed and the shortened statutory period for reply set forth in the Office communication be restarted on the new mail date.

The petition is granted.

Petitioner provided a statement that the Office communication in question was received at the correspondence address of record on February 5, 2002. The petition was filed within two weeks of receipt of the Office communication. A substantial portion of the 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 Office communication in question will be remailed and the period for reply that was originally set forth in the Office communication will be restarted to run from the new mail date of the Office communication.

Kevin Little

Kevin Little
Office of Initial Patent Examination
(703) 308-1863

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 10

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON, DC 20006

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MAY 2 0 2004

OFFICE OF PETITIONS

In re Application of :
In Kwon Jeong :
Application No. 09/948,676 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 9323.009.00 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 12, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 5, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 6, 2003.

The application file is being forwarded to Technology Center 3700, Art Unit 3723 for further processing.

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

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

PATENT VENTURE GROUP
10788 CIVIC CENTER DRIVE
SUITE 215
RANCHO CUCAMONGA, CA 91730

In re Application of :
Roger R. Dube :
Application No. 09/948,730 : DECISION GRANTING PETITION
Filed: September 1, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. GATEP001 :

This is a decision on the petition, filed January 4, 2007, 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 9, 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 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.

It is noted that the person signing the instant petition is not an attorney or record. However, in accordance with 37 CFR 1.34(a), the signature of Joe R. Brock III appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3204.

This application is being referred to the Office of Publications for further processing.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 13

BRETTON L. CROCKETT
TRASKBRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY, UT 84110-2550

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DEC 0 5 2002

OFFICE OF PETITIONS

In re Application of :
Janneke Meulenberg et al :
Application No. 09/948,747 : NOTICE
Filed: September 7, 2001 :
Attorney Docket No. 2183-5051US :

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
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Paper No.

TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

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MAY 1 4 2004

OFFICE OF PETITIONS

In re Application of :
Janneke Meulenberg et al :
Application No. 09/948,747 : DECISION ON PETITION
Filed: September 7, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2183-5051US :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 3, 2003, 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;[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 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.

---

[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).

The instant pending application was filed on September 7, 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, was mailed on February 11, 2004.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center Art Unit 1648 will consider applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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RIDGEFIELD, CT 06877-0368

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OFFICE OF PETITIONS

In re Application of :
Meulenberg : DECISION ON PETITION
Application No. 09/948,747 :
Filed: September 7, 2001 :
Atty. Dkt. No.: 2183-5051US :

This decision is in response to the petition under 37 CFR 1.137(b), filed June 8, 2006.

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

This application became abandoned October 2, 2005 for failure to timely submit a proper reply to the final Office action mailed July 1, 2005. The final Office action set a three (3) month shortened statutory period of time for reply. Notice of Abandonment was mailed February 7, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply; (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 of the reply until the filing of a grantable petition was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; 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 instant petition has been reviewed and found in compliance with the provisions of 37 CFR 1.137(b). Accordingly, the failure to timely submit a proper reply to the final Office action is accepted as having been unintentionally delayed.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the application, the application is again abandoned in favor of the continuation application 11/422,970, filed June 8, 2006.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6516246	2003-02-04	09948788	2001-09-10	37975-0009

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	/Ryan J. Aaron/	Date (YYYY-MM-DD)	2008-08-12
Name	Ryan J. Aaron	Registration Number	54950

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. 6516246
Issue Date: February 4,2003
Application No. 09948788
Filed: September 10,2001
Attorney Docket No. 37975-0009

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

This is a decision on the electronic petition, filed August 12,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of August 12,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MEREK & VOORHEES
673 SOUTH WASHINGTON STREET
ALEXANDRIA, VA 22314

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MAY 11 2005

OFFICE OF PETITIONS

In re Application of :
R. Lee Roberts et al :
Application No. 09/948,798 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. PA-179 :

This is a decision on the petition under 37 CFR 1.313(c))(2), filed May 10, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on April 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 1724 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

D'AMBROSIO & ASSOCIATES, P.L.L.C.
10260 WESTHEIMER
SUITE 465
HOUSTON TX 77042

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AUG 2 5 2004

OFFICE OF PETITIONS

In re Application of
James W. Bess et al.
Application No. 09/948,810
Filed: September 7, 2001
Attorney Docket No.: EXCE002
Title: METHOD AND SYSTEM FOR GENERATING HYPOCHLORITE

DECISION ON PETITION

This is a decision on the petition under 37 CFR § 1.137(b)[1], filed May 19, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to submit the drawings in a timely manner in reply to the Notice of Allowance and Issue Fee Due (notice), mailed December 24, 2003, which set a shortened statutory period for reply of three (3) months and indicated that corrected drawings would be required. No drawings were received in response to this notice, and extensions of time are not permitted for transmitting formal drawings[2]. Accordingly, the above-identified application became abandoned on March 25, 2004. A Notice of Abandonment was mailed April 26, 2004.

With the instant petition, Petitioner has met the requirements to revive the above-identified application, pursuant to 37 CFR 1.137(b). Petitioner submitted the required reply in the form of the submission of corrected drawings. Petitioner has also submitted the petition fee and has made the proper statement of unintentional delay.

As such, the petition is **GRANTED**.

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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 in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

2 See MPEP §710.02(e).

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

Telephone inquiries concerning *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

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

Knobbe Martens Olson & Bear LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

MAILED

OCT 11 2002

Technology Center 2100

In re Application of: Coimbatore Krishnarao PRAHALAD
Application No. 09/948,822
Filed: September 7, 2001
For: EDUCATION EVENT MODULE AND PRESENTATION

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed October 2, 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: Andre Marais
Blakely, Sokoloff, Taylor & Zafman
60 S. Market Street, Suite 510
San Jose, CA 95113-2392

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ANDREW M. SOLOMON
PHARMACIA & UPJOHN COMPANY
GLOBAL INTELLECTUAL PROPERTY
301 HENRIETTA STREET
KALAMAZOO, MI 49001

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JAN 13 2006

OFFICE OF PETITIONS

In re Application of :
Dirk Teagarden, et al. :
Application No. 09/948,827 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 00104.US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 26, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application is being revived solely for purposes of continuity with a continuation application filed April 18, 2005. As continuity has been established by this decision reviving the above-identified application, the application is again abandoned in favor of continuing application No. 10/704,989 filed November 10, 2003.

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

The application file is being forwarded to Files Repository.

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
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DTW Sep-06

VAN SOMEREN, P.C.
P.O. BOX 2107
CYPRESS TX 77410-2107

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SEP 25 2006

OFFICE OF PETITIONS

In re Application of :
Edward Q. Yavitz :
Application No. 09/948,834 : DECISION ON PETITION
Filed: 7 September, 2001 :
Attorney Docket No. YAVI 0030 :

This is a decision on the petition filed on 2 May, 2006, under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 17 December, 2004, for failure to timely reply to the Office action requiring restriction and/or election mailed on 16 November, 2004, which set a one (1) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 20 June, 2005.

Petitioners have filed an amendment including an election.

---

[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)).

Receipt of the change of correspondence address is acknowledged.

This application is being referred to Technology Center Art Unit 2625 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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#17

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MAR 01 2002

Office of the Director
Group 3600

STAAS & HALSEY LLP
700 11th Street, N.W., Ste. 500
Washington, DC 20001

In re Application of :
Motoyoshi Sekiya et al. : DECISION GRANTING PETITION
Application No. 09/948,858 : TO RESET PERIOD FOR REPLY
Filed: September 10, 2001 :
For: OPTICAL AMPLIFYING APPARATUS, :
COMPLEX OPTICAL AMPLIFYING :
APPARATUS, AND OPTICAL :
COMMUNICATION SYSTEM :

This is a decision on the petition filed on January 18, 2002, requesting that the shortened statutory period for reply set forth in the Office communication mailed on November 27, 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 17, 2002. The petition was filed within two weeks of receipt of the Office communication. A substantial portion of the set reply period had elapsed on the date of receipt. Furthermore, the Office communication was mailed between October 13, 2001 and January 2, 2002, when delivery of mail from the Office to certain regions of the country was delayed.

Accordingly, the shortened statutory period that was originally set forth in the Office communication originally mailed on November 27, 2001 is hereby reset to run FROM THE RECEIPT DATE OF January 17, 2002.

Michael Carone, Acting Director
Technology Center 3600
703-306-4180
kd/dw: 02/28/02

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 6

Jeffrey A. Pyle
WILLIAMS, MORGAN & AMERSON, P.C.
7676 Hillmont, Suite 250
Houston, TX 77040

MAILED

JAN 2 7 2006

TECHNOLOGY CENTER 2100

In re Application of:
Matthew J. Schumacher
M. Scott Bunker
Application No. 09/948,872
Filed: September 7, 2001
For: METHOD AND APPARATUS IMPLEMENTING A TUNED STUB SCSI TOPOLOGY

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation Under 37 CFR 1.36 and 10.40(c) filed October 9, 2001.

A Power of Attorney Under 37 CFR 1.36 was filed on November 27, 2001. The Power Of Attorney revoked all prior Powers Of Attorney and appointed CONLEY, ROSE & TAYON as the attorneys of record of the instant application. The Power Of Attorney of November 27, 2001 was accepted. Accordingly, all communications from the U.S. Patent and Trademark Office to applicant are to be conducted by CONLEY, ROSE & TAYON.

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

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

James R. Matthews

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security

cc: Jonathan M. Harris
CONLEY, ROSE & TAYON
P. O. Box 3267
Houston, TX 77253-3267

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HEWLETT PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
P O BOX 272400
3404 E. HARMONY ROAD
FORT COLLINS, CO 80527-2400

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JAN 2 7 2006

TECHNOLOGY CENTER 2100

In re Application of: Schumacher, et al.
Application No. 09/948,872
Attorney Docket No. 2007.017900
Filed: February 3, 2000
For: METHOD AND APPARATUS IMPLEMENTING A TUNED STUB SCSI TOPOLOGY

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT *under 37 CFR 1.181(a)*

The petition under 37 CFR 1.181 for withdrawal of the holding of abandonment, filed May 24, 2005, is acknowledged.

A review of the application reveals that an Office action (Notice of Allowability (PTOL-37) and Notice of Allowance and Issue Fee(s) Due (PTOL-85)) was mailed to Applicants on May 5, 2004. Since a response was not received before the expiration of the three-month statutory period for payment of the issue fee (35 U.S.C. 151), the application was held abandoned, as indicated in the Notice of Abandonment mailed on September 20, 2004.

Applicant's petition provides a statement that the May 5, 2004 Office action was not received and indicates that the Office action was mailed to an incorrect correspondence address. Applicant's submission provides a copy of the revocation of the power of attorney, along with a stamped post card indicating an OIPE receipt date of January 18, 2002. 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)". In addition, within the application papers, a Notice of Withdrawal of Attorney, filed October 9, 2001 and Change of Correspondence Address (PTO/SB/122) filed April 12, 2004 have been found. These papers were apparently overlooked. Accordingly, the correspondence address has been updated to that indicated above. The Office regrets any inconvenience this may have caused.

In view of these facts, the petition is **GRANTED**.

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 and REMAIL** the Notice of Allowability (PTOL-37) and Notice of Allowance and Issue Fee(s) Due (PTOL-85) to Applicant. The application will then be forwarded to the Office of Patent Publications to await payment of the Issue Fee.

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

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HEWLETT PACKARD COMPANY
P.O. BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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APR 0 4 2006

OFFICE OF PETITIONS

In re Application of :
Schumacher, et al. :
Application No. 09/948,872 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 200301996-2 :

This is a decision on the petition under 37 CFR 1.181, filed May 24, 2005 and October 7, 2005, to withdraw the holding of abandonment. The petition was recently forwarded to this office for review.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee and publication fee, if applicable, on or before August 5, 2004, and for failure to timely file corrected drawings on or before August 5, 2004 as required by the Notice of Allowability mailed May 5, 2004. Accordingly, this application became abandoned on August 6, 2004. A Notice of Abandonment was mailed on September 20, 2004.

Petitioner asserts the Office action was never received and that the Office mailed the action to the wrong address. A review of the application file indicates that the Office action was mailed to an incorrect address. The Office sincerely apologizes for this error.

Accordingly, the petition is granted and the holding of abandonment is withdrawn.

This application is being forwarded to Technology Center 2100, for re-mailing of the Notices originally mailed May 5, 2004, with a new period for response.

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

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2-23-05 Pape

TO SPE OF : ART UNIT 2600

SUBJECT : Request for Certificate of Correction on Patent No.: 6810035

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

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, sho patent read as shown in the certificate of correction? No new matter should be introduced, r the scope or meaning of the claims be changed.

Please Check Claims

Thank You For Your Assistance

Certificates of Correction

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
- ☐ Denied — State the reasons for denial below.

Comments:

SPE 12/11/05 A

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ALEXANDRIA, VA 22313-1450
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Paper No. 6

MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

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JAN 07 2004

OFFICE OF PETITIONS

In re Application of
Richardson et al.
Application No. 09/948,878
Filed: September 10, 2001
Attorney Docket No. 84191

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed December 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 October 10, 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 11, 2001. A Notice of Abandonment was mailed on December 1, 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 Paralegal Liana Chase at (703) 306-0482.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DEC 22 2005

OFFICE OF PETITIONS

WHITAKER, CHALK, SWINDLE & SAWYER, LLP
3500 CITY CENTER TOWER II
301 COMMERCE STREET
FORT WORTH, TX 76102-4186

In re Application of :
Manuel Negreiro, et al. :
Application No. 09/948,881 : DECISION ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 0547CG-03 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 15, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a proper reply to the final Office action mailed May 26, 2005, which set a three (3) month shortened statutory period for reply. A Notice of Appeal was filed on July 26, 2005, but the appeal brief was not filed within the two-month period following the filing of the Notice of Appeal. The application became abandoned on September 27, 2005.

The appeal brief, filed November 15, 2005, is noted.

The application file is being directed to the Board of Patent Appeals and Inferences for further processing.

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

#4
1/28/02

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 4

Jeffrey A. Pyle
Williams, Morgan & Amerson, P.C.
7676 Hillmont, Suite 250
Houston, Texas 77040

In re Application of: Michael L. Sabotta et al.)
Application No. 09/948,890)
Filed: September 7, 2001) **DECISION ON REQUESTS FOR**
For: DIMM CONNECTOR) **WITHDRAWAL AS ATTORNEY**
ACCOMMODATING SIDEBAND)
SIGNALS FOR BATTERY STATUS)
AND/OR CONTROL)

This is a decision on the Requests To Withdraw from Representation filed October 9, 2001 and 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.

The request filed January 24, 2002 meets all the requirements. Accordingly the request is **GRANTED**. This filing supersedes the request dated October 9, 2001 which is **DISMISSED** as **MOOT**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Michael F. Heim, Esquire
Conley, Rose & Tayon
600 Travis, Suite 1800
Houston, Texas 77002-2912

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

OPPENHEIMER WOLFF & DONNELLY LLP
1400 Page Mill Road
Palo Alto, CA 94304-1124

MAILED

JUN 0 3 2003

Technology Center 2100

In re Application of: Bahman Zargham, et al.)
Application No. 09/948,927)
Filed: September 7, 2001)
For: FRAMEWORK, ARCHITECTURE, METHOD AND SYSTEM FOR REDUCING LATENCY OF BUSINESS OPERATIONS OF AN ENTERPRISE)

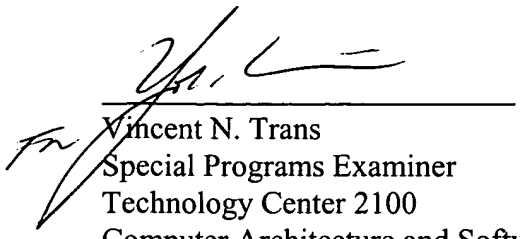
DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed May 16, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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

OIPE JC42 JAN 11 2002 PATENT & TRADEMARK OFFICE

#3 Sector 8

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
09/948,950	09/07/2001	James Satsuo Yamaguchi	ISENSOR.004A

CONFIRMATION NO. 7734

FORMALITIES LETTER

OC000000006885768

20995
KNOBBE MARTENS OLSON & BEAR LLP
620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CA 92660

Date Mailed: 10/11/2001

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

06/07/2002 SDIRETA1 00000003 09948950

01 FC:201 370.00 OP
02 FC:205 65.00 OP
03 FC:203 144.00 OP
04 FC:202 252.00 OP

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given **TWO MONTHS** from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The statutory basic filing fee is missing.
  *Applicant must submit $ **710** to complete the basic filing fee 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 $768.
  - **$288** for **16** total claims over 20.
  - **$480** for **6** independent claims over 3 .
- 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 $ 1608.**

Repln. Ref: 06/07/2002 SDIRETA1 0009363900
DAN:111410 Name/Number:09948950
FC: 704 $777.00 CR

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

COPY OF PAPERS
ORIGINALLY FILED

date: 06/07/2002 SDIRETA1 09948950
AGOITOM 00000109 111410
54.00 CR
AGOITOM 00000109 111410
54.00 CH
Adjustment date: 01/16/2002 AGOITOM
01 FC:105 -130.00 OP
02 FC:103 -288.00 OP
03 FC:102 -504.00 OP
04 FC:101 -686.00 OP
01 FC:105 130.00 OP
02 FC:103 288.00 OP
03 FC:102 504.00 OP
04 FC:101 686.00 OP

OIPE JC42
JAN 11 2002
PATENT & TRADEMARK OFFICE

PATENT

Case Docket No. ISENSOR.004A
Date: December 6, 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Yamaguchi, et al.
App. No.	:	09/948,950
Filed	:	September 7, 2001
For	:	MULTILAYER MODULES WITH FLEXIBLE SUBSTRATES
Group Art Unit	:	2835

I hereby certify that this correspondence and all marked attachments are 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

December 6, 2001
(Date)

Bruce S. Itchkawitz, Reg. No. 47,677

TRANSMITTAL LETTER

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

ATTENTION: BOX MISSING PARTS

Dear Sir:

In response to the Notice to File Missing Parts of Application Under 37 CFR 1.53(f), which was mailed by the Office on October 11, 2001, enclosed are:

(X) An executed Declaration by Inventors.

(X) A Power of Attorney Form and Copy of Assignment.

(X) A copy of the Notice to File Missing Parts.

(X) A return prepaid postcard.

COPY OF PAPERS
ORIGINALLY FILED

PATENT

Case Docket No. ISENSOR.004A
Date: December 6, 2001

(X) Fees as calculated below:

FILING FEE	$1,478.00
SURCHARGE 37 CFR 1.16(e)	$ 130.00
TOTAL OF ABOVE CALCULATIONS	$1,608.00

(X) A check in the amount of **$1,608.00** to cover the above fees is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required, now or in the future, or credit any overpayment, to Account No. 11-1410.

Bruce S. Itchkawitz
Registration No. 47,677
Attorney of Record

H:\DOCS\BSI\BSI-2030.DOC:sam
120501

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mike Enkerlin
12265 World Trade Drive
Suite B
San Diego, CA 92128

COPY MAILED

OCT 28 2008

OFFICE OF PETITIONS

In re Patent No. 6,786,372 :
Issued: September 7, 2004 :
Application No. 09/948,963 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 8218-PA01 :

This is a decision on the petition under 37 CFR 1.137(a) filed September 26, 2008. A petition under 37 CFR 1.137 is only appropriate in an abandoned patent application. As this matter concerns an expired patent, the petition is properly filed under 37 CFR 1.378(b) and will be treated as such.

The petition is **dismissed without prejudice**.

Petitioner is allowed **TWO MONTHS** from the mailing date of this decision to provide an appropriate response. Extensions of time under 37 CFR 1.136(a) are NOT available.

The patent issued September 7, 2004. The 3.5. year maintenance fee could have been paid from September 7, 2007, through March 7, 2008, or with a surcharge, as authorized by 37 CFR 1.20(h), during the period March 8, 2008, until midnight September 7, 2008. Petitioner did not do so. Accordingly, the patent expired at midnight on September 7, 2008.

It is noted that the instant petition is signed by Mike Enkerlin, who is one of two named inventors of this patent. The maintenance fee will only be accepted from all of the named inventors on the patent, a registered patent agent, or the assignee empowered pursuant to 37 CFR 3.73(b). Petitioner is advised that any renewed petition must be either signed by both of the named inventors on the patent, a registered agent, or the assignee for patent. Petitioner is further cautioned to consult 37 CFR 1.378 and Section 2500 of the Manual of Patent Examining Procedure prior to filing the renewed petition.

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

By mail: Commissioner for Patent
Mail Stop Petitions
Box 1450
Alexandria, VA 22313-1460

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

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

K. A. McLaughlin

Kenya A. McLaughlin
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
www.uspto.gov

Paper No. 23

TRASK BRITT, P.C.
P.O. BOX 2550
SALT LAKE CITY, UT 84110-2550

COPY MAILED

JAN 29 2004

OFFICE OF PETITIONS

In re Application of :
Myra Noorely Widjojoatmodjo et al :
Application No. 09/948,966 : NOTICE
Filed: September 7, 2001 :
Attorney Docket No. 5064US :

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 1648.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE DIRECTV GROUP, INC.
PATENT DOCKET ADMINISTRATION
CA / LA1 / A109
2230 E. IMPERIAL HIGHWAY
EL SEGUNDO CA 90245

COPY MAILED

NOV 20 2008

OFFICE OF PETITIONS

In re Application of :
Rosario Fiallos :
Application No. 09/948,976 :
Filed: September 7, 2001 : ON PETITION
Attorney Docket No: PD-201016A :

This is a decision on the petition to withdraw the holding of abandonment, filed October 29, 2008, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on April 17, 2008, for failure to file a timely response to the non-Final Office Action mailed January 16, 2008, which set a three (3) month statutory period for reply. Accordingly, a Notice of Abandonment was mailed October 7, 2008. Petitioner asserts that the non-Final Office Action was never received.

The file record discloses that the Office Action was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the docket to show that the Office Action mailed January 16, 2008 was not received. Petitioner also explains that after searching the file and docket records, where receipt of the office action would have been indicated if it had been received, it was concluded that no correspondence was received for this matter from the USPTO.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the non-Final Office Action mailed January 16, 2008, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Office Action was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and no petition fee is due.

This matter is being referred to Technology Center 2623 for a re-mailing of the non-Final Office Action and for a restarting of the period for response.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

Lyon & Lyon LLP
633 West Fifth Street
Suite 4700
Los Angeles, CA 90071

MAIL

OCT 2 5 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Johannes W. F. Majoor)
Application No. 09/948,991)
Filed: September 7, 2001) **DECISION ON REQUEST FOR**
For: MECHANISM ANDMETHOD FOR) **WITHDRAWAL AS ATTORNEY**
CONTINUOUS OPERATION OF A)
RULE SERVER)

This is a decision on the Request To Withdraw from Representation filed September 16, 2002.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Lori Eldridge
Fair, Isaac, Inc. and HNC Software
200 Smith Ranch Road
San Rafael, CA 94903

UNITED STATES PATENT AND TRADEMARK OFFICE

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

CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC
1420 FIFTH AVENUE
SUITE 2800
SEATTLE WA 98101-2347

COPY MAILED

MAR 15 2006

OFFICE OF PETITIONS

In re Application of	:	
Nuss et al.	:	
Application No. 09/949,035	:	DECISION ON PETITION
Filed: September 6, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1443.110	:	

This is a decision on the petition under 37 CFR 1.78(a)(3), filed December 8, 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 **DISMISSED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), 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.

As stated in MPEP § 201.11(f), in addition to the petition under 37 CFR 1.78 and the amendment or ADS, to add a benefit claim it may be necessary for applicant to file one of the following, depending on the status of the application:

(A) a request for continued examination (RCE) under 37 CFR 1.114, if the application is under a final rejection or has been allowed (see MPEP §706.07(h)). An amendment or ADS filed after final rejection or allowance is not entered as a matter of right and must be filed in compliance with 37 CFR 1.116 or 1.312, respectively; or

(B) a reissue application or a request for a certificate of correction under 37 CFR 1.323, if appropriate (see MPEP § § 1402 and 1481), if the application has issued as a patent.

Further, the Office proposed changing Sec. 1.312 to provide that any amendment filed after the date the issue fee is paid must be accompanied by: (1) A petition under Sec. 1.313(c)(1) to withdraw the application from issue; (2) an unequivocal statement that one or more claims are unpatentable; and (3) an explanation as to how the amendment is necessary to render such claim or claims patentable. The Office is adopting this change to Sec. 1.312 by clarifying that an amendment under Sec. 1.312 (after allowance) must be filed prior to or with payment of the issue fee, and eliminating Sec. 1.312(b) (since the provisions of proposed Sec. 1.312(b) are duplicative of the provisions of proposed and adopted Sec. 1.313(c)(1)).

Accordingly, because the issue fee was received on August 31, 2005, prior to the instant petition under 37 CFR 1.78(a)(3) on December 8, 2005, a petition to withdraw the application from issue and an RCE (with the requisite fees), along with a renewed petition under 37 CFR 1.78(a)(3), are required.

As authorized, the $1370.00 fee required by 37 CFR 1.78(a)(3)(ii) will be charged to petitioner's Deposit Account No. 03-1740.

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 Chase
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. 8

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

COPY MAILED

NOV 0 4 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of :
Sadao Ibukuro :
Application No. 09/949,087 :
Filed: September 10, 2001 :
Attorney Docket No. 1075.1173 :

This is a decision on the petition under 37 CFR 1.313(c), filed October 29, 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 August 26, 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.

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2633 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

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

Paper No. 3

Steven P. Wigmore, Esq.
KING & SPALDING
45th Floor
191 Peachtree Street, N.E.
Atlanta, GA 30303

MAILED

SEP 2 5 2002

Technology Center 2100

In re Application of: Jon Ramsey, et al.
Application No. 09/949,095
Filed: September 7, 2001
For: INTEGRATED COMPUTER SECURITY MANAGEMENT SYSTEM AND METHOD

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

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 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

UNITED STATES 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

Calfee, Halter & Griswold LLP
1650 Fifth Third Center
21 East State Street
Columbus, OH 43215-4243

COPY MAILED

FEB 0 2 2004

OFFICE OF PETITIONS

In re Application of

Battat, et al.

Application No. 09/949,101

Filed: September 7, 2001

Attorney Docket No. 28280/04044

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 22, 2004, 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 24, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time were obtained within the allowable period. Accordingly, the application became abandoned on July 25, 2003. A Notice of Abandonment was mailed on November 17, 2003.

The amendment filed January 22, 2004, is noted and made of record.

The request for extension of time within the third month is noted, but cannot be accepted as it was made outside the maximum statutory period for reply. Deposit account 03-0172 will be refunded $950.00, in due course.

The application is being forwarded to Technology Center 2100 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20061010

DATE : October 10, 2006

TO SPE OF : ART UNIT 1616

SUBJECT : Request for Certificate of Correction on Patent No.: 7,067,145

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: Johann Richter **Art Unit** 1616

OIPE IAP68
SEP 11 2006
PATENT & TRADEMARK OFFICE

ccjc

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re United States Patent Application of:		**Docket No.:**	**4115-134**
Applicants:	**Allen R. Place, et al.**	**Examiner:**	**Ernst V. Arnold**
Application No.:	**09/949,104**	**Art Group:**	**1616**
Date Filed:	**September 7, 2001**	**Confirmation No.:**	**7590**
U.S. Patent No.:	**7,067,145**	**Customer No.:**	
Date Issued:	**June 27, 2006**	**23448**	
Title:	**USE OF ARACHIDONIC ACID FOR ENHANCED CULTURING OF FISH LARVAE AND BROODSTOCK**		

FIRST CLASS MAIL CERTIFICATE

I hereby certify that I am mailing the attached documents to the Commissioner for Patents on the date specified. in an envelope addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, and First Class Mailed under the provisions of 37 CFR 1.8.

Karin Szypszak

Karin Szypszak

September 7, 2006

Date of Mailing

Certificate of Correction SEP 13 2006

SUBMISSION OF CERTIFICATE OF CORRECTION UNDER THE PROVISIONS OF 37 CFR § 1.322 AND 35 U.S.C. § 254 FOR U.S. PATENT NO. 7,067,145

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Enclosed is a Certificate of Correction submitted under the provisions of 35 U.S.C. §254, to correct errors of the Patent and Trademark Office in the printing of the above-identified U.S. Patent.

SEP 13 2006

In addition to the errors of the Patent and Trademark Office, a review of the patent has revealed the presence of errors attributable to applicant/patentee, which however are of a minor and self-evident character, as listed below:

In the References Cited: Other Publications section, page 1, first column, first entry, first line, "k.J." should be -- K..J. --

In the References Cited: Other Publications section, page 2, first column, line 39, "effects" should be -- Effects --

In the References Cited: Other Publications section, page 2, first column, line 49, "j.R." should be -- J.R. --

In the References Cited: Other Publications section, page 2, second column, line 60, "Chplle" should be -- Chapelle --

In the References Cited: Other Publications section, page 3, first column, line 26, "juenile" should be -- juvenile --

In the References Cited: Other Publications section, page 3, first column, line 52, "confinment" should be -- confinement --

In column 9, line 15, "chromatography" should be -- chromatograph --

In column 19, line 30, "242° C" should be -- 24 ± 2° C --

In column 20, line 24, "Folson" should be -- Folsom --

In column 20, line 39, "Berkley" should be -- Berkeley --

In column 21, line 22, "(64.91.7%" should be -- (64.9 ± 1.7% --

In columns 21-22, Table 5, Table columns 2-4 and Table rows 1-5 should be: --

Diet #1	Diet #2	Diet #3
0.6 ± 0.5	0.8 ± 0.6	1.8 ± 0.1
23.6 ± 2.5	29.2 ± 1.4	30.5 ± 0.7
15.1 ± 1.3	18 ± 0.1	18 ± 40.4
4.1 ± 0.1	4.0 ± 0.4	3.1 ± 0.2

--

In columns 23-24, Table 6, Table columns 9-10 and Table rows 8-13 should be --

13.1 ± 0.5	12.1 ± 0.1
2.2 ± 0.1	2.8 ± 0.1
0	0
4.4 ± 0.1	7.6 ± 0.2
19.9 ± 0.4	21.1 ± 0.1
48.5 ± 0.1	45.7 ± 0.3

--

In columns 23-24, Table 7, Table columns 8-10 and Table rows 6-15 should be --

6.5 ± 0.4	32.1 ± 9.4	31.1 ± 0.4
6.7 ± 0.1	4.8 ± 1.5	4.8 ± 0
30.0 ± 1.4	18.7 ± 5.5	18.5 ± 0.1

2.7 ± 0	2.7 ± 0.8	3.6 ± 0
0	0	0
1.5 ± 0.2	5.4 ± 1.5	9.7 ± 0.2
23.1 ± 0.5	25.4 ± 0.2	27.9 ± 0
44.0 ± 0.4	38.4 ± 1.6	34.0 ± 0.3
6.1 ± 0.1	5.5 ± 0.1	5.1 ± 0
31.5 ± 0.8	31.6 ± 1.6	34.3 ± 0.2

--

In column 26, line 23, "1.80.2" should be -- 1.8 ± 0.2 --

In column 26, line 24, "7.51.2" should be -- 7.5 ± 1.2 --

In column 26, line 27, "6.50.2" should be -- 6.5 ± 0.2 --

In column 26, line 28, "3.50.3" should be -- 3.5 ± 0.3 --

In column 28, line 67 "hetrotrphically" should be -- heterotrophically --

In column 30, Table 12, Table column 3 and Table line 7, "4.90.8" should be -- 4.9 ± 0.8 --

In column 39, line 12, "k.J." should be -- K.J. --

In column 40, line 38, "effects" should be -- Effects --

In column 40, line 48, "j.R." should be -- J.R. --

In column 41, line 14, "rainbow" should be -- rainbow --

In column 41, line 41, the paragraph break should be removed.

In column 41, line 63, "Chpelle" should be -- Chapelle --

In column 44, line 47, "diet essential" should be -- diet of essential --

While these errors are not of a serious enough nature to warrant a Certificate of Correction, the patentee nevertheless wishes to bring same to the attention of the Patent and Trademark Office, so that same is made of record in the file of this patent.

Respectfully submitted,

Steven J. Hultquist
Reg. No. 28,021
Attorney for Applicants

INTELLECTUAL PROPERTY/
TECHNOLOGY LAW
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 4115-134

Enclosures:
Certificate of Correction [2 pgs.]
Return Postcard

The USPTO is hereby authorized to charge any deficiency or credit any overpayment of fees properly payable for this document to Deposit Account No. 08-3284

PTO/SB/44 (04-05)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO: 7,067,145

APPLICATION NO: 09/949,104

ISSUE DATE: June 27, 2006

INVENTOR(S): Allen R. Place, et al.

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

In the References Cited: Other Publications section, page 1, second column, line 31, "secretion in vitro." should be -- secretion in vitro. Neuroendocrinology 50:708-715 --

In the References Cited: Other Publications section, page 2, second column, line 21, "Jeny" should be -- Jeney --

In the References Cited: Other Publications section, page 3, second column, line 61, "Gonález" should be -- González --

At column 1, lines 9-11, "VATYING DIETARY RATIOS OF ARACHIDONIC ACID ON LARVALTISSUE" should be -- VARYING DIETARY RATIOS OF ARACHIDONIC ACID ON LARVAL TISSUE --

In column 1, line 35, "C and F" should be -- C and E --

In column 8, line 15, "unionized N_3" should be -- unionized NH_3 --

In column 15, line 21, "K^+ -ATPasc" should be -- K^+ -ATPase --

In column 19, line 51, "0.1 g Nettler UMT2" should be -- 0.1 g (Nettler UMT2 --

In column 28, line 39, "(WC-CO)" should be -- (WC-Cl) --

In column 30, line 2, "drun-filter" should be -- drum-filter --

In column 39, line 47, "interleukin-2" should be -- interleukin-1 --

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Steven J. Hultquist
Intellectual Property/Technology Law
P.O. Box 14329
Research Triangle Park NC 27709

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO: 7,067,145

APPLICATION NO: 09/949,104

ISSUE DATE: June 27, 2006

INVENTOR(S): Allen R. Place, et al.

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

In column 39, line 50, the paragraph break should be removed.

In column 41, line 49, the paragraph break should be removed.

In column 43, lines 64-66 (claim 1), "administering to said larvae in the culturing medium a nutritional diet" should be -- administering live feed to said larvae in the culturing medium, wherein the live feed is fed a nutritional diet --

In column 44, lines 38-39 (claim 13), "administering to said larvae a nutritional diet" should be -- administering live feed to said larvae, wherein the live feed is fed a nutritional diet --

In column 44, line 47 (claim 14), "administering to said larvae in a nutritional" should be -- administering to said larvae live feed, wherein the live feed is fed a nutritional --

In column 44, lines 54-55 (claim 15), "administering to said larvae in a nutritional diet essential" should be -- administering to said larvae live feed, wherein the live feed is fed a nutritional diet of essential --

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Steven J. Hultquist
Intellectual Property/Technology Law
P.O. Box 14329
Research Triangle Park NC 27709

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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SEP 13 2006

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Paper No. 112503

ANTONELLI, TERRY, STOUT & GRAUS, LLP
1300 North Seventeenth Street, Suite 1800
Arlington, VA 22209

NOV 24 2003

In re Application of)
JESSEP et al.)
Application No. 09/949,118) DECISION ON REQUEST TO
Filed: September 10, 2001) WITHDRAW FROM RECORD
For: Attorney Docket No. 219.40447X00)

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed June 23, 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 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: c/o 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
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ALEXANDRIA, VA 22313-1450
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Paper No. 12

DADE BEHRING INC.
LEGAL DEPARTMENT
1717 DEERFIELD ROAD, BOX 778
DEERFIELD, IL 60015-0778

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DEC 0 2 2003

OFFICE OF PETITIONS

In re Application of :
Gebrian et al. :
Application No. 09/949,132 : DECISION ON
Filed: September 7, 2001 : PETITION
Attorney Docket No. DCS-9143 :

This is a decision on the "PETITION UNDER 37 CFR § 1.181 FOR REVIVAL OF AN UNAVOIDABLY ABANDONED APPLICATION," filed May 5, 2003 (and resubmitted by facsimile transmission on September 18, 2003). Therein, applicants request that the holding of abandonment in the above-identified application be withdrawn, or in the alternative, that the application be revived pursuant to § 1.137(a) based on unavoidable delay, and if not, the application be revived purusant to § 1.137(b) based on unintentional delay.

The petition under § 1.137(a) is **DISMISSED**[1].

The petition under § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to timely reply to the non-final Office action mailed September 25, 2002. This restriction requirement set a three (3) month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). No extensions of time having been obtained and no reply filed, the above-identified application became abandoned on December 26, 2002. A Notice of Abandonment was mailed on April 17, 2003.

Applicants promptly filed the instant petition. By decision mailed June 6, 2003, the Technology Center denied applicants' petition under § 1.181 to withdraw the holding of abandonment. The file was recently forwarded to the undersigned for consideration of the alternative petitions under § 1.137.

Petitioner maintains that the delay in replying to the Restriction Requirement dated September 25, 2002, was unavoidable because the official Restriction Requirement was not timely received by Applicants. Petitioner states that applicants first became aware of the mailing of the Restriction Requirement when

[1] 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 C.F.R. § 1.137(a)." Extensions of time are permitted under § 1.136(a).

Applicants checked the PTO's PAIR database and learned of the mailing of the Restriction Requirement. Petitioner states that, upon request to the examiner, the Restriction Requirement was first received by facsimile on April 9, 2003.

Consideration under § 1.137(a)

A grantable petition under § 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 C.F.R. §1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to §1.137(d). The instant petition lacks item(3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

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

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 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 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, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

(1) the error was the cause of the delay at issue;
(2) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
(3) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

See MPEP 711.03(c)(III)(C)(2)(See also In re Egbers, et al., 6 U.S.P.Q.2d 1869 (Commr. Pat. 1988), *rev'd on other grounds sub nom*, Theodor Groz & Sohne & Ernest Bechert Nadelfabrik KG v. Quigg, 10 U.S.P.Q.2d 1787 (D.D.C. 1988); In re Katrapat, AG, 6 U.S.P.Q.2d 1863 (Commr. Pat. 1988).

An adequate showing should include (when relevant):
(1) statements by all persons with direct knowledge of the circumstances surrounding the delay, setting forth the facts as they know them;
(2) a thorough explanation of the docketing and call-up system in use;
(3) identification of the type of records kept;
(4) identification of the persons responsible for the maintenance of the system;
(5) copies of mail ledger, docket sheets, file wrappers and such other records as may exist which would substantiate an error in docketing;
(6) include an indication as to why the system failed in this instance ; and
(7) information regarding the training provided to the personnel responsible for the docketing error, degree of supervision of their work, examples of other work functions carried out, and checks on the described work which were used to assure proper execution of assigned tasks.

It was previously determined that applicants had not met the showing required to establish nonreceipt of the Office communication. See Decision on Petition under § 1.181 mailed June 6, 2003. As petitioner has not met his burden of establishing nonreceipt, it cannot be concluded that the delay in replying was unavoidable based on nonreceipt.

Nor has petitioner provided evidence to show that the delay should be considered unavoidable based on docketing error. Petitioner asserts that had the paper been received then it would have been docketed. Petitioner neither asserts nor submits evidence to show docketing error.

Having not made an adequate showing of nonreceipt of the Office action, or otherwise established unavoidable delay, the petition cannot be granted under § 1.137(a).

The request to rescind the authorization to pay the petition fee for consideration under § 1.137(a) if the petition is not favorably granted is denied. 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 CFR 1.137. See H.R. Rep. No. 542, 97th Cong., 2d Sess. 6 (1982), 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: (A) will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m), regardless of whether the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

Consideration under §1.137(b)

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, the showing is sufficient to revive the application under § 1.137(b) on the basis of unintentional delay[2]. The petition as originally filed on May 5, 2003 included the required reply to the Restriction Requirement. The petition fee has been charged to Deposit Account No. 04-0100, as authorized. 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. As this utility application was filed after June 8, 1995, no terminal disclaimer is required.

Accordingly, the petition is granted under § 1.137(b).

This application file is being returned to Technology Center 1743 for examination, including consideration of the amendment filed June 5, 2003 (Paper No. 11).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

[2] A grantable petition under §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 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; and (4) any terminal disclaimer (and fee as set forth in §1.20(d)) required pursuant to §1.137(d)

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

JUN - 6 2003

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rvk

Paper Number: 8

In re application of :
Peter Gebrian et al : DECISION ON
Serial No. 09/949,132 : PETITION
Filed: September 7, 2001 :
For: A MULTI-COMPARTMENT REAGENT CONTAINER HAVING MEANS TO INHIBIT RE-USE THEREOF :

This is a response to the PETITION FOR REVIVAL OF AN UNAVOIDABLY ABANDONED APPLICATION, filed May 5, 2003. The petition requests that the abandonment, as set forth in the Notice of Abandonment of April 17, 2003, for failure to timely file a proper response to the Office letter mailed September 25, 2002 be withdrawn. The petitioner asserts that the Office letter was not received by the applicants.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action. See MPEP 711.03(c)(II).

A review of the petitioner's evidence indicates that the request cannot be granted. As set forth in MPEP 711.03(c) II- PETITION TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION :

> "The showing required to establish the nonreceipt of an Office communication **must** include a statement from the practitioner stating that Office communication was not received by the practitioner and **attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received**. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement. " (emphasis added)

The evidence presented is insufficient to establish that the above noted Office letter (i.e. Restriction Requirement) was not received by the petitioner. The evidence provided includes a statement by the petitioner that the Office letter mailed September

25, 2002 was not received, also provided is a copy of the attorney's "Master List By Case Number" printed on September 20, 2002. But the instant petition does not contain a statement attesting that a search of the file jacket was made, and the result of such search revealed that the Office letter was not received and it fails to contain a statement that a search of the docket records was made and the results of such search revealed that the Office letter mailed September 25, 2002 was not received. It is noted that a copy of attorney's docket records for the period September 25, 2002 through October 9, 2002 where the Office letter dated September 25, 2002 would have posted had it been timely received is not included in the instant petition.

In the alternative, as requested by the petitioner, the application will be forwarded to Office Of Petitions to process the petition under 37 CFR 1.137(b) based on unintentional delay.

The Petition is **DENIED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

DADE BEHRING INC.
LEGAL DEPT. - PATENTS
1717 DEERFIELD, RD., #778
DERFIELD, IL 60015-0778

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OFFICE OF PETITIONS

SUSAN F. JOHNSTON,
ATTORNEY AT LAW
P.O. BOX 4449
JOHNSON CITY, TN 37602-4449

In re Application of :
Barry Thomas DEADERICK, et al. :
Application No. 09/949,187 : DECISION ON PETITION
Filed: September 6, 2001 : TO WITHDRAW
Attorney Docket No. DEA08011 : FROM RECORD
:

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed March 21, 2007.

The request is **NOT APPROVED**.

The Office cannot approve the request at this time since the reason provided does not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "a practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office." More specifically, 37 CFR 10.40 states, "if paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reason set forth in the request, have become a corporate attorney and do not have adequate time to continue prosecution, does not meet any of the conditions set forth in 37 CFR 10.40.

There is an outstanding Office action mailed February 16, 2007 that requires a reply by the applicant.

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

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at 571-272-6735.

April Wise
Petitions Examiner
Office of Petitions

cc: TOM DEADERICK
115 B.G. HARRELL ROAD
JONESBOROUGH, TN 37659

UNITED STATES PATENT AND TRADEMARK OFFICE

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DNAX RESEARCH, INC.
LEGAL DEPARTMENT
901 CALIFORNIA AVENUE
PALO ALTO, CA 94304

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OFFICE OF PETITIONS

In re Application of	:	
Daniel Gorman	:	DECISION ON APPLICATION
Application No. 09/949,192	:	FOR
Filed: September 7, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. DX01169K	:	
	:	

This is a decision on the "APPLICATION UNDER 37 C.F.R. 1.705 FOR CORRECTION OF PATENT TERM ADJUSTMENT," filed March 8, 2005. Applicant requests that the initial determination of patent term adjustment be corrected from two hundred sixteen (216) to two hundred twenty-four (224) days.

The request for correction of the initial determination of patent term adjustment (PTA) is **DISMISSED**. However, for the reasons set forth herein, the determination of PTA at the time of the mailing of the notice of allowance is being corrected to TWO HUNDRED FOUR (204) days.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance is TWO HUNDRED FOUR (204) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 14, 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 to date is 216 days. Applicant requests correction of the PTA to 224 days. Applicant states that the period of adjustment of 329 days should have been reduced by 105 days, not 113 days. Applicant submits no basis for this assertion.

A review of the application history confirms that the period of adjustment of 329 days is correct. However, a review reveals that the period of reduction should be increased to 125 days including: 1) 12 days for applicant delay in responding to the Notice to File Missing Parts of Application mailed November 27, 2001; 2) 21 days for the supplemental response received November 24, 2003; and 3) 92 days for applicant delay in filing a response to the non-final Office action mailed February 18, 2004. Specifically, applicant's response to the Notice mailed November 27, 2001, was not received in the Office until March 11, 2002, three months and 12 days later. Likewise, applicant's response to the Office action mailed February 18, 2004 was not received into the Office until August 18, 2004, three months and 92 days later. Pursuant to § 1.704(b), periods of reduction of 12 and 92 days should have been entered. (In this regard, applicant's attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000)).

Moreover, on November 3, 2003, applicant filed a response. Then on November 24, 2003, applicant filed a supplemental response. Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. The record does not support a conclusion that this additional response was expressly requested by the examiner. Accordingly, the PTA was properly reduced by 21 days, the number of days beginning on the day after the date the initial reply was filed, November 4, 2003, and ending on the date that the supplemental reply or other such paper was filed, November 24, 2003 for the filing of the supplemental response.

In view thereof, the correct determination of PTA at the time of the mailing of the notice of allowance is TWO HUNDRED FOUR (204) days.

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

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

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

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

Enclosure: Copy of adjusted PAIR calculation

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

PATULA & ASSOCIATES P.C.
14th Floor
116 South Michigan Avenue
Chicago, IL 60603

COPY MAILED

AUG 0 8 2002

OFFICE OF PETITIONS

In re Application of
O'Callaghan, et al.
Application No. 09/949,201
Filed: September 7, 2001
Atty. Dkt. No.: 5384/55372
For: AUTOMATIC VERIFICATION EQUIPMENT

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed April 11, 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 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 September 7, 2001 without an executed oath or declaration and naming John S. O'Callaghan, Daniel Gibbons, Tony S. Chan, Ann Dawkins, Niren Shah, and Jack Bonn as joint inventors. Accordingly, on October 11, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring, among other items, an executed oath or declaration and a surcharge.

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 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirements (1) and (2) stated above.

As to inventor Ann Dawkins, petitioner has failed to sufficiently establish the 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, refused to sign the oath or declaration.

The petition alleges that inventor Ann Dawkins cannot be reached. The declaration of Maribel Barron states she was "unable to find or reach inventor Ann Dawkins to obtain her signature." Declarant

further states on February 14, 2002, declarant mailed a cover letter, declaration, check and return envelope to inventor Ann Dawkins. The envelope was delivered, however, it is unknown by whom the package was received. Declarant also telephoned inventor Ann Dawkins at the inventor's last known telephone number and discovered the telephone line was disconnected. Thereafter, in March, 2002, declarant attempted to locate inventor Ann Dawkins via the internet without success.

Where inability to locate a non-signing inventor is alleged, diligent effort to locate the non-signing inventor must be undertaken. Petitioner is required to undertake additional effort to locate the non-signing inventor and provide the non-signing inventor with a complete copy of the patent application (specification, claims, drawings, oath or declaration). Details regarding attempts to locate the non-signing inventor should be submitted in the form of a declaration or affidavit by one having first hand knowledge of the information contained therein.

Petitioner should note that while the petition alleges the non-inventor cannot be located at the non-signing inventor's last known address, a cursory review of the Lexis®.com EZFIND Combined Person Locator Nationwide database indicates inventor Ann Dawkins more recently resided at the following address: **1N154 WEST STREET, WHEATON, IL 60187-0180.**

As to item (2), an acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 has not been presented. The declaration presented with the instant petition is not acceptable as it fails to set forth the citizenship, residence, and mailing address of each non-signing inventor. Petitioner is advised that any renewed petition should include an executed oath or declaration in full compliance with 37 CFR 1.63 and 37 CFR 1.64.

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

By mail: Commissioner for Patents
Box DAC
Washington, DC 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 the undersigned at (703) 305-0310.

Alesia M. Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 15

PATULA & ASSOCIATES P.C.
14th Floor
116 South Michigan Avenue
Chicago, IL 60603

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MAR 26 2004

OFFICE OF PETITIONS

In re Application of	: DECISION WITHDRAWING HOLDING OF
O'Callaghen, et al.	: ABANDONMENT AND GRANTING
Application No. 09/949,201	: STATUS UNDER 37 CFR 1.47(a)
Filed: September 7, 2001	:
Atty. Dkt. No.: 5384/55372	:
For: AUTOMATIC VERIFICATION EQUIPMENT	:

This decision is in response to the petition under 37 CFR 1.181 to withdraw the holding of abandonment for the above-identified application and the renewed petition under 37 CFR 1.47(a) filed July 11, 2003.

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

The petition under 37 CFR 1.47(a) is **GRANTED**.

DECISION UNDER 37 CFR 1.181

The application was held abandoned October 9, 2002 for failure to timely respond to the decision on petition mailed August 8, 2002. The decision set a two (2) month shortened statutory period of time for reply. Notice of Abandonment was mailed June 11, 2003.

Petitioner asserts that a response to the decision mailed August 8, 2002 along with petition for extension of time were timely submitted November 8, 2002. Petitioner has provided a copy of the response allegedly submitted November 8, 2002. In accordance with 37 CFR 1.8, the response bears a Certificate of Mailing date of November 8, 2002.

If view of the certificate of mailing on the response to the decision on petition, the petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby GRANTED. Accordingly, the Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

DECISION UNDER 37 CFR 1.47(a)

Petitioner has shown that inventors Ann Williams and Daniel Gibbons either cannot be reached or refused to execute the declaration for the above-identified application after having been presented with the application papers.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventors at the addresses given in the petition. 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 returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
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. 7

BANNER & WITCOFF
1001 G STREET N.W.
SUITE 1100
WASHINGTON, DC 20001

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APR 2 9 2002

OFFICE OF PETITIONS

In re Application of	:
Arne Hook et al	:
Application No. 09/949,205	: DECISION GRANTING
Filed: September 14, 2001	:STATUS UNDER 37 CFR 1.47(a)
For: SYSTEM AND METHOD FOR WIRELESS MULTIMEDIA COMMUNICATION	:

This is in response to the petition under 37 CFR 1.47(a), filed March 21, 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

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

AKOS NEMETH-BUHIN
61267 RILKEWEG 4
NEU-ANSPACH
GERMANY

COPY MAILED

APR 2 9 2002

OFFICE OF PETITIONS

In re Application of
Arne Hook; Akos Nemeth-Buhin; Paul Wattenberger; John Ellenberger; Keary Griffin; Timo Vitikainen; Elias Zaretsky
Application No. 09/949,205
Filed: September 14, 2001
For: SYSTEM AND METHOD FOR WIRELESS MULTIMEDIA COMMUNICATION

Dear Mr. Nemeth-Buhin:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the Irvin Dingle at (703) 306-5684. 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

cc:

Banner & Witcoff
1001 G Street N.W.
Suite 1100
Washington, DC 20001

UNITED STATES PATENT AND TRADEMARK OFFICE

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

ROSS A. DANNENBERG
BANNER & WITCOFF, LTD.
SUITE 1100
1001 G. STREET, N. W.
WASHINGTON, DC 20001-4597

MAIL

JAN 2 6 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Hook et al.
Application No. 09/949,205
Filed: September 14, 2001
For: SYSTEM AND METHOD FOR WIRELESS MULTIMEDIA COMMUNICATION

DECISION ON PETITION TO MAKE SPECIAL (ACCELERATED EXAMINATION) UNDER M.P.E.P. §708.02 (VIII)

This is a response to the petition filed December 22, 2003, under 37 C.F.R. §1.102(d) and M.P.E.P. §708.02 (VIII): Accelerated Examination, to make the above-identified application special.

The Petition is **GRANTED**.

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

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

(a) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);

(b) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status;

(c) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. The pre-examination search must be directed to the invention as claimed in the application for which special status is requested. A search made by a foreign patent office satisfies this requirement;

(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.

Petition to Make Special is **GRANTED** since all of the requirements for special status under M.P.E.P. §708.02, Section VIII has been met.

It is noted that Petitioners state that they have included a check for the petition fee along with the petition. However, the office has no record of the check. Therefore, the fee for the petition will be deducted from Deposit Account No. 19-0733.

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

Brian L. Johnson
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3595

HMJ: 12/09/04

09949286

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 6/705 **Paper No.:** _____

TO SPE OF : ART UNIT 2875-HUBAR

SUBJECT : Request for Certificate of Correction on Patent No.: 6749310

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:

Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

SPE

2875
Art Unit

09/949,206

Patent
Docket No. 157049-0003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Patent of:

Rudy G. POHLERT, et al.

Patent No.: 6,749,310

Issued: June 15, 2004

Serial No.: 09/949,206

Filed: September 7, 2001

For: WIDE AREA LIGHTING EFFECTS SYSTEM

Group Art Unit: 2875

Examiner: Husar, Stephen F.

REQUEST FOR CERTIFICATE OF CORRECTION UNDER 37 C.F.R. § 1.322 AND 1.323

ATTN: Certificate of Correction Branch
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In proofreading the above-identified patent, it has been discovered that errors occurred, some of which are believed attributable to the Patent and Trademark Office, and some of which are not attributable to the Patent and Trademark Office. The errors are shown on the enclosed form PTO 1050. All errors not attributable to the PTO are believed to be a clerical or typographical nature, or of minor character, and were made in good faith. It is respectfully requested that a Certificate of Correction be issued.

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Connie Kwon
Name of Person Mailing Paper

Connie Kwon
Signature of Person Mailing Paper

April 25, 2005
Date of Deposit

1291863.1 04

04/28/2005 HAHHED1 00000021 6749310
01 FC:1811 100.00 OP

Specifically, in Claim 13, the term "mounting bracket" has been corrected in two places to --mounting assembly--. The term "mounting bracket" originally appeared in claim 26, which was canceled and incorporated into claim 14. Although claim 26 originally recited "said mounting bracket," no antecedent basis existed for the term "mounting bracket." From the context of the claim, it is clear that the term "mounting bracket" was intended to refer to the previously introduced "mounting assembly" element in claim 14. It is respectfully submitted that the error in language is a clear and obvious clerical or typographical error, and is appropriate for correction by certificate.

Other minor errors appear in the issued drawings. Certain features appearing on the original and formal drawings were apparently omitted from the drawings as issued. These have been corrected.

Enclosed is our check in the amount of $100.00 for the fee set forth under 37 C.F.R. § 1.20(a). Please charge any deficiencies in connection with this communication, or credit any overpayment, to Deposit Account **09-0946**.

It is believed that the issuance of a Certificate of Correction is appropriate to correct these errors. However, if the Patent and Trademark Office deems that a Certificate of Correction is not needed, it is requested that this letter be entered into the patent file and the patentees so notified. If some further action is needed, the undersigned attorney may be contacted to expedite any such action.

Respectfully submitted,

IRELL & MANELLA LLP

Dated: April 25, 2005

By: _____
Christopher A. Vanderlaan
Reg. No. 37,747

1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

PTO/SB/44 (10-96)
Approved for use through 6/30/99. OMB 0651-0033
Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert et al

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

IN THE CLAIMS:

Column 18,

Claim 13, Lines 15 and 18, "mounting bracket" should be –mounting assembly--.

IN THE DRAWINGS:

Figure 1, Add dashed lines 144 emanating from central hole 103 of camera 140, toward subject 146.

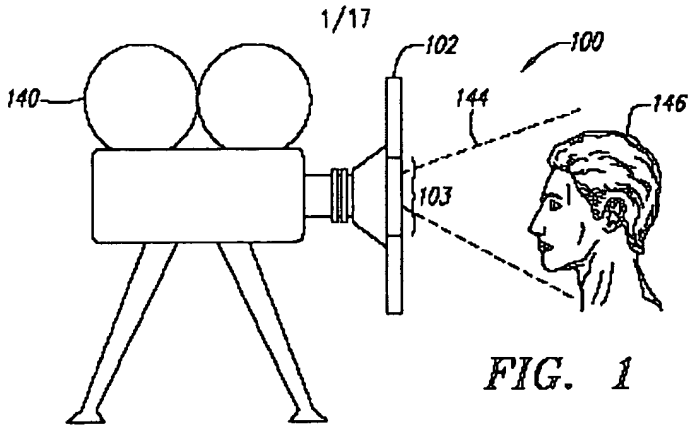

FIG. 1

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

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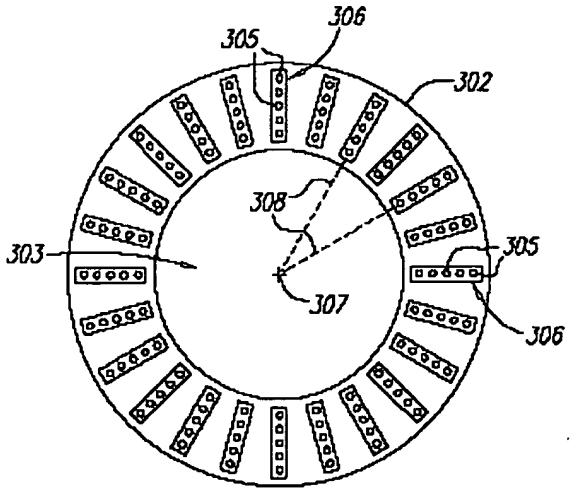
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 4, Add dashed rays 308 emanating from a center point 307 of the lighting frame 302.



MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 5, Add radiating light regions 520, 521 from lamps arranged on the front surface of the lighting frame 302.

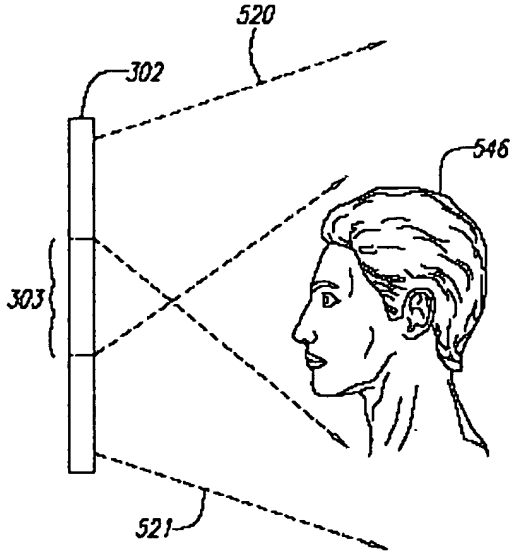

FIG. 5

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

PATENT NO. 6,749,310 B2

No. of additional copies 0

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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 6, Add circular pattern of reflected light segments 652 around the iris 650.

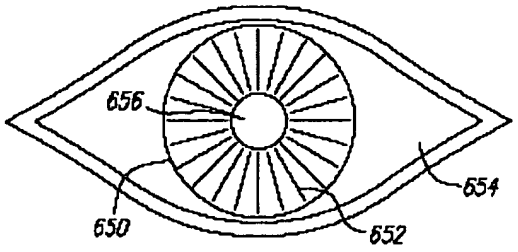

FIG. 6

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
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PTO/SB/44 (10-96)
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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 7, Add exemplary light pattern 796 over lens element 795.

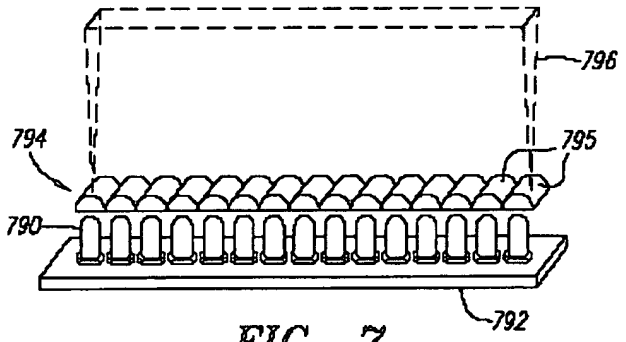

FIG. 7

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 8, Add emanating light 878 from filtering lens element (e.g., wave guide) 876 on an individual light element (e.g., LED) 872. Add emanating light 874 from the LED 872 in a generally even pattern.

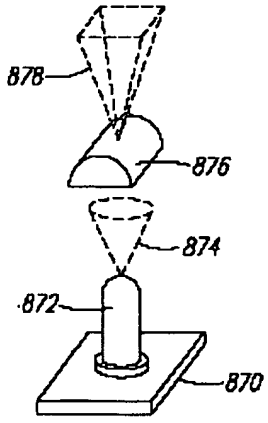

FIG. 8

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

PATENT NO. 6,749,310 B2

No. of additional copies 0

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(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6,749,310 B2
DATED : June 15, 2004
INVENTOR(S) : Rudy G. Pohlert, et al

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

IN THE DRAWINGS:

Figure 11, Add radial pattern, emanating from a centerpoint 1119 of the opening 1107 in the middle of the lighting frame 1101.

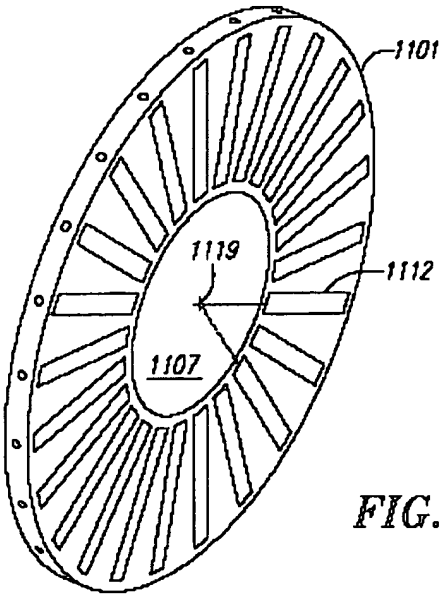

FIG. 11

MAILING ADDRESS OF SENDER: Christopher A. Vanderlaan
Irell & Manella LLP
1800 Avenue of The Stars
Suite 900
Los Angeles, CA 90067-4276
Telephone: 310-277-1010
Facsimile: 310-203-7199

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov

Paper No. 9

John F. Harris
1464 Ridgeview PLNW
Albany, OR 97321

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NOV 0 9 2004

OFFICE OF PETITIONS

In re Application of :
John F. Harris, et al. :
Application No. 09/949,225 :
Filed: September 7, 2001 :
Attorney Docket No. None :

ON PETITION

This is a decision on the petition, filed May 3, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

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 Robert K. Lau appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. A courtesy copy of this decision is being mailed to petitioner. However, if Mr. Lau desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. All future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

The petition is **GRANTED**.

A review of the record discloses that the application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed May 30, 2003, which set a shortened statutory period for reply of three (3) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. A Notice of Abandonment was mailed on March 7, 2004. On May 3, 2004, an amendment and the present petition were filed.

The petition is found to comply with the requirements of 37 CFR 1.137(b).

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.

The application file is being forwarded to Technology Center AU 1724 for consideration of the amendment filed May 3, 2004.

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

cc: Robert K. Lau
1300 SW 5th Ave., Suite 2750
Portland, OR 97201

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO IL 60661

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OFFICE OF PETITIONS

In re Patent No. 6,907,281 :
Issued: June 14, 2005 :
Application No. 09/949,226 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 52755-8012.US00 :

This is a decision in response to the communication filed July 37, 3005, which is being treated as a petition under 37 CFR 3.81(b) to correct the name of the assignee on the front page of the above-identified patent by way of a certificate of correction.

The petition is **DISMISSED**.

Petitioner requests issuance of a Certificate of Correction in the name of " General Electric Company, Schenectady, New York."

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.

While petitioner seeks to have a Certificate of Correction issued in the name of **General Electric Company, Schenectady, New York,** USPTO assignment records, at Reel 015251 and Frame Number 0840, show **General Electric Company, Waukesha, Wisconsin** as the assignee at the time of issuance. There is no evidence that a corrected assignment was submitted for recordation prior to issuance of this patent. Therefore, issuance of the requested Certificate of Correction would not be proper.

In view of the above, petitioner may file a certificate of correction under 37 CFR 1.323 requesting that GE Medical Systems, Waukesha, WI be deleted on the patent and that General Electric Company, Waukesha, WI be added to the front page of the patent.

Accordingly, **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 (no further fee is required) which sets forth General Electric Company, Waukesha, WI, as the assignee**. *No certificate of correction will be issued which sets forth an assignee other than the assignee set forth in this request. 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 this request, since this decision operates as an instruction to the Certificates of Correction Branch to issue the requested certificate of correction.

If a correction of the recorded assignment is desired, petitioner is directed to Section 323 of the Manual for Patent Examining Procedures (MPEP) for these procedures.

Inquiries concerning this decision should be directed to Sherry D. Brinkley at (571) 272-3204. Any questions concerning issuance of a certificate of correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

ALAN M. KRASS
GIFFORD, KRASS, GROH, SPRINKLE.
ANDERSON & CITKOWSKI, PC
280 N OLD WOODARD AVE
SUITE 400
BIRMINGHAM MI 48009

COPY MAILED

AUG 2 3 2002

OFFICE OF PETITIONS

In re Application of
Mault & Sanderson
Application No. 09/949,244
Filed: September 7, 2001
Attorney Docket No. MJA-22280/03
For: IMAGE BASED DIET LOGGING

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed March 11, 2002.

The petition is granted.

Petitioner has shown that the non-signing inventor, John Sanderson, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the exhibits to the petition establish that the inventor was mailed the application papers, including the specification, claims and drawings, but failed to respond to the request that he sign the declaration. Petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64.

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 inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After this decision is mailed, the above-identified application will be forwarded to Technology Center 3700 for examination in due course.

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOHN SANDERSON
11832 SUNRISE DRIVE
BAINBRIDGE, WA 981110

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AUG 2 3 2002

OFFICE OF PETITIONS

In re Application of
Mault & Sanderson
Application No. 09/949,244
Filed: September 7, 2001
Attorney Docket No. MJA-22280/03
For: IMAGE BASED DIET LOGGING

LETTER

Dear Mr. Sanderson:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

ATTORNEY OF RECORD: ALAN M. KRASS
GIFFORD, KRASS, GROH, SPRINKLE
ANDERSON & CITKOWSKI, PC
280 N OLD WOODARD AVE
SUITE 400
BIRMINGHAM MI 48009

SCANI **Please forward case and paper to address shown below.**

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/24/08

TO SPE OF : ART UNIT 3753 Fox, John C.

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/949255 Patent No.: 6953046

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

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

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

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

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

_____

_____

_____

_____

SPE 3751 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. 15

FERNANDEZ & ASSOCIATES, LLP.
PO BOX D
MENLO PARK, CA 94026-6204

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AUG 07 2003

OFFICE OF PETITIONS

In re Application of :
Fernandez et al. :
Application No.:09/949,257 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. FERN-P005C :

This decision concerns the June 30, 2003 petition under 37 CFR 1.182, requesting that the name of one of the inventors be changed.

The petition is **GRANTED.**

When an inventor has changed his/her name after the filing of an application and wishes to have the new name reflected in the application/patent, he/she must file a petition under 37 CFR 1.182 that includes:[1] (1) a $130 petition fee; (2) an affidavit signed in both names, setting forth the procedure whereby the name change was effected; or a certified copy of the court order.

The instant petition encloses the $130 petition fee; a declaration by this inventor, Irene Yungpei Fernandez, stating that her name has been changed to Irene Yungpei Hu due to marriage dissolution, and signed in both names. The petition is thus granted.

The file is being forwarded to Technology Center 2100 **for entry of the inventor name change (from "Irene Yungpei Fernandez" to "Irene Yungpei Hu") in the USPTO record.**[2]

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

---

1 MPEP section 605.04(c) (Rev. 1, Feb. 2003).

2 MPEP sections 605.04(f), (g) (Rev. 1, Feb. 2003).

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Foley & Lardner
PO Box 80278
San Diego, CA 92138

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FEB 13 2006

OFFICE OF PETITIONS

In re	:	
Evans	:	
Application No. 09/949,278	:	RECONSIDERATION OF
Filing Date: Sep.7, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket: SALK2310-1	:	

This decision is in response to applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705" timely[1] filed December 29, 2005 requesting that the PTA determination at the time of the notice of allowance be adjusted from ninety-four(94) days to a determination of 159 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 ninety-four(94) days of applicants delay is not accurate. Applicants assert that the determination is inaccurate because the Office reduced applicants' PTA by a period of 65 days under 37 CFR 1.704(c)(8) due to the submission of a supplemental response on September 16, 2005. Applicants assert that the supplemental response was "expressly requested" by the examiner and therefore should not be a failure to engage in reasonable efforts to conclude prosecution of the application under 37 CFR 1.704(c)(8).

Applicants'arguments are persuasive. The record reflects that the supplemental reply was filed after three telephone conferences with the examiner in which agreed upon language was reached and the examiner requested that applicant submit the amendment to the claims. Accordingly, the submission of the

[1]Issue fee paid on December 29, 2005.

supplemental response under the circumstances enumerated in the request for reconsideration is not a failure to engage in reasonable efforts to conclude prosecution of the application. Accordingly, the Office will remove the sixty-five (65) day reduction to the patent term. Accordingly, the proper determination of PTA at the time of the mailing of the notice of allowance is one hundred and fifty-nine (251-90-2= 159) days.

After the mailing of this decision, the application will be forwarded to the Office of Patent Publications for a prompt issuance of the patent application. Any delays in issuing the application within four months of the payment of the issue fee will be reflected in the issue notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office has assessed the $200.00 fee for the submission of this request for reconsideration. The Office will not waive this required fee.

Any questions concerning this application should be directed to Kery Fries at 571-272-7757.

Kery A Fries

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

cc: Adjusted PAIR calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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JUL 21 2006
OFFICE OF PETITIONS

In re Application of :
Trenton B. Henry, et. al. :
Application No. 09/949,288 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. 5707-00201 :

This is a decision on the petition under 37 CFR 1.137(b), filed on April 7, 2006, to revive the above-identified application.

The above application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance and Fee(s) Due mailed June 23, 2005. A Notice of abandonment was mailed on March 17, 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; (2) the petition fee of $1,500; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office also acknowledges receipt of $300 for payment of the publication fee and $6 for payment of two (2) advance soft copies, filed on August 11, 2005 and again on April 7, 2006. Since petitioner submitted these fees twice, the payment submitted on April 7, 2006 will be considered as a duplicate; and therefore, $306 will be credited to petitioner's deposit account.

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

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Paper No. 12

MARK C. JACOBS
3033 EL CAMINO AVENUE
SACRAMENTO, CA 95821

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JUL 2 5 2003

OFFICE OF PETITIONS

In re Application of
Eric Teng
Application No. 09/949,310
Filed: September 7, 2001
Attorney Docket No.

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 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 non-final Office action mailed June 20, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 21, 2002.

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

The application file is being forwarded to Technology Center 3700 for further processing.

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

09/949316

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 1-19-06

TO SPE OF : ART UNIT 3725

SUBJECT : Request for Certificate of Correction on Patent No.: 6945486

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 ~~PK3-922~~ SOUTH 9A22
Palm location 7580 - Tel. No. 305-8309

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

Please check Drawings

Thank You For Your Assistance

E Ubens
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:

DRAWINGS OK
MR

DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

SPE

3725
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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WEISS & MOY PC
4204 NORTH BROWN AVENUE
SCOTTSDALE, AZ 85251

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MAY 13 2008

OFFICE OF PETITIONS

In re Application of	:	
Gary Weingardt	:	
Application No. 09/949,311	:	DECISION ON PETITION
Filed: September 7, 2001	:	TO MAKE SPECIAL UNDER
Attorney Docket No. 4185P2276CIP	:	37 CFR 1.102(c)(1)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(1), filed August 31, 2004, to make the above-identified application special based on applicant's age as set forth in M.P.E.P. § 708.02, Section IV.

The petition is **GRANTED**.

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

The instant petition includes a copy of applicant's driver's license. Accordingly, the above-identified application has been accorded "special" status.

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

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

The application is being forwarded to the Technology Center Art Unit 3711 for action on the merits commensurate with this decision.

April M. Wise
Petitions Examiner
Office of Petitions

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GLENN PATENT GROUP
3475 EDISON WAY, SUITE L
MENLO PARK, CA 94025

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AUG 18 2008

In re Application of :
MAJOOR, Johannes W. F. :
Application No. 09/949,321 : DECISION ON PETITION
Filed: September 07, 2001 : TO WITHDRAW
Attorney Docket No. **35006-578001US** : 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 01, 2008.

The request is **NOT APPROVED** because it is moot.

A review of the file record indicates that the power of attorney to Glenn Patent Group has been revoked by the assignee of the patent application on July 10, 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 Michelle R. Eason at 571-272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C**
ATTN: PATENT INTAKE CUSTOMER NO. 76615
ONE FINANCIAL CENTER
BOSTON MA 02111

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

OPPENHEIMER WOLFF & DONNELLY LLP
1400 Page Mill Road
Palo Alto, CA 94304-1124

MAILED

JUN 0 2 2003

Technology Center 2100

In re Application of: Thomas Collins, et al.)
Application No. 09/949,323)
Filed: September 7, 2001) **DECISION ON REQUEST FOR**
For: CRYPTOGRAPHIC SYSTEM ENABLING OWNERSHIP OF A SECURE PROCESS) **WITHDRAWAL AS ATTORNEY**

This is a decision on the Request To Withdraw from Representation filed May 16, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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#7

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DEC 29 2003

TECHNOLOGY CENTER 2100

Paper No. 7

Leah Sherry
DECHERT LLP
P.O. Box 10004
Palo Alto, CA 94303-0961

In re Application of:)
)
Shaz Qadeer) **DECISION ON REQUEST FOR**
Application No. 09/949,324) **WITHDRAWAL AS ATTORNEY**
Filed: September 07, 2001)
For: METHOD FOR VERIFYING ABSTRACT MEMORY MODELS OF SHARED MEMORY MULTIPROCESSORS

This is a decision on the Request To Withdraw from Representation filed December 09, 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 December 09, 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

ZM

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

cc: Attn: Richard P. Lange
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

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Paper No. 6
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MAR - 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

KEISLING & PIEPER PLC
1 EAST CENTER STREET
SUITE 217
Fayetteville AR 72701

In re Application of
BRAY
Application No. 09/949,379
Filed: September 6, 2001
For: **LANGUAGE FILTER FOR HOME TV**

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on November 22, 2002 (paper # 3).

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.

The Request to Withdraw as Attorney is **DISMISSED AS MOOT.**

Attorneys requesting withdraw are not of record due to a Revocation of Power of Attorney executed by the assignee on May 23, 2003.

All future communications from the Office will continue to be directed to the address listed above 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:
Mark G. Kachigian
Head, Johnson & Kachigian
228 West 17th place
Tulsa, Oklahoma 74119

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John E. Carlson
400 West Maple Road, Suite 350
Birmingham, MI 48009

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DEC 26 2007

OFFICE OF PETITIONS

In re Patent No. 6,644,218 :
Issue Date: November 11, 2003 :
Application No. 09/949,390 : NOTICE
Filed: September 8, 2001 :
Patentee(s): Robert V. Gruber :

This is a notice regarding a communication for acceptance of a fee deficiency submission under 37 CFR 1.28 filed on July 16, 2007. 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**. Therefore, status as a small entity has been removed and all future fees paid must be paid at the large entity rate.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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Paper No. 13

ALISA A. HARDIN
CHIRON CORPORATION
4560 HORTON STREET, M/S R-338
EMERYVILLE, CA 94608-2916

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FEB 2 4 2004

OFFICE OF PETITIONS

In re Application of :
Sung-Yun Kwon et al :
Application No. 09/949,392 : ON PETITION
Filed: September 7, 2001 :
Attorney Docket No. OPF 28.20 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 12, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 14, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on June 15, 2003.

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

The application file is being forwarded to Technology Center AU 1615 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
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P.O. Box 1450
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DIW Apr-05

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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APR 19 2005

OFFICE OF PETITIONS

In re Patent No. 6,808,820 :
Issued: 26 October, 2004 :
Application No. 09/949,413 : ON PETITION
Filed: 5 September, 2001 :
Atty Docket No. APT:TD.013A :

This is a decision on the petition filed on 10 January, 2005, which is being 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**.

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 forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] See Official Gazette of 22 June, 2004.

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)
6604897	2003-08-12	09949422	2001-09-07	4394443

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity

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

Small Entity

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Robert J. Lambrechts/	Date (YYYY-MM-DD)	2007-11-19
Name	Robert J. Lambrechts	Registration Number	46854

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. 6604897
Issue Date: August 12,2003
Application No. 09949422
Filed: September 7,2001
Attorney Docket No. 394443

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

This is a decision on the electronic petition, filed November 18,2007 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 18,2007. This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

Faulk, Devona E

From: Newsome, Lamonte
Sent: Wednesday, May 06, 2009 12:35 PM
To: Faulk, Devona E
Cc: Chin, Vivian
Subject: SPE's Reponse2-3-09

Paper No.: _____

DATE : 5/6/09

TO SPE OF : ART UNIT 2614

SUBJECT : Request for Certificate of Correction for Appl. No.: 09949425 Patent No.: 7447318 B2

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580
You can fax the Directors/SPE response to 571-270-9990

LAMONTE

NEWSOME

Certificates of

Correction Branch

703-308-9390 ext. 112

Thank You For Your Assistance

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

☑ **Approved** **All** changes apply.

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

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

Comments:

Vivian Chin

SPE
Art Unit

#12

UNITED STATES PATENT & TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
Washington, D.C. 20231

PATENT & TRADEMARK OFFICE
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SEP 27 2002
LICENSING & REVIEW

Howrey Simon Arnold & White, LLP
301 Ravenswood Avenue
Box No. 34
Menlo Park, CA 94025-3434

In re Application of:
Jackie A. Bodnar et al:
For Serial No. 09/949,428

DECISION ON
REQUEST FOR
RECONSIDERATION

Filed: September 7, 2001
For: **GENE AND SEQUENCE VARIATION ASSOICATED WITH LIPID DISORDER**

This is a decision on the REQUEST FOR RECONSIDERATION filed October 17, 2001 responding to the communication (FORM PTOL-456) mailed October 4, 2001.

The request has been **DENIED** to the extent indicated below.

42 U.S.C. 2182 states in part **"... useful in the production or utilization of special nuclear material or atomic energy".** A review of the application file history reveals among other things the use of a radioactive isotope "^{35}S " as disclosed in at least page 9 of the instant specification. Therefore under the directions from the Department of Energy (DOE) this application has been made available to them under 42 U.S.C. 2182 since the following subject matter relates to at least one of the following:

G. Materials, apparatus and methods concerning isotope and/or radioactive source technology including those utilizing (including responsive to) radioactive sources in:

a. Life Sciences such as medicine (diagnostic and therapeutic), ecology, disease and pest control, animal husbandry, etc.

b. Industrial processes such as food processing, sterilization, polymer production, etc.

c. Investigations of the environment or the earth

H. Instruments employing a radioactive source and/or radioactivity detector in the operation thereof.

Since the forth-five day informal period has expired, the thirty- day formal requirement will be issued immediately.

Joanne P. Hodge
Supervisory Legal Instruments Examiner
Licensing and Review
Patent Technology Center 3600

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BOND SCHOENECK & KING
ONE LINCOLN CENTER
SYRACUSE, NY 13202-1355

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OFFICE OF PETITIONS

In re Application of :
John G. Mitchell et al :
Application No. 09/949,469 : DECISION GRANTING PETITION
Filed: September 10, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. AXI-176 :

This is a decision on the petition, filed December 15, 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 March 13, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the 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 April 7, 2005 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3220.

This matter is being referred to Technology Center Art Unit 2621.

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

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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PENNIE & EDMONDS
3300 HILLVIEW AVENUE
PALO ALTO, CA 94304

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DEC 22 2003

OFFICE OF PETITIONS

In re Application of :
Martin Fussenegger et al :
Application No. 09/949,470 : DECISION GRANTING PETITION
Filed: September 7, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 9931-007-999 :

This is a decision on the petition, filed September 19, 2003 and supplemented on November 26, 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 September 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 previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

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

This application is now before Technology Center Art Unit 1636 for further examination in due course.

Frances Hicks

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

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OFFICE OF PETITIONS

Cozen & O'Connor, P.C.
1900 Market Street, 7th Floor
Philadelphia, PA 19103-3508

In re Application of
Atheal et al.
Filed: September 10, 2001
Application No. 09/949,559

: DECISION GRANTING PTA

This decision is in response to Applicants' 'APPLICATION FOR PATENT TERM ADJUSTMENT" filed on September 28, 2006 requesting that the USPTO adjust the PTA determination at the time of the mailing of the notice of allowance from a determination of ZERO (0) days to a determination of 40 days.

Applicants' letter concerning PTA is **GRANTED.** The correct amount of PTA at the time of the mailing of the notice of allowance is 40 days. The Office will adjust the PTA determination at the time of the mailing of the notice of allowance to reflect this decision.

Applicant asserts that the Office erred in assessing a one hundred and thirty-seven (137) day reduction pursuant to 37 CFR 1.704(c)(7). Applicants assert that the Office mailed applicant a restriction requirement on June 25, 2003. Applicants filed a response on September 5, 2003. On October 17, 2003, the Office held applicants' restriction requirement in abeyance because applicants' failed to meet the disclosure requirements of 1.821-825. The Office sent out applicants a response that the response of September 5, 2003 was non-compliant. Applicants' assert that the holding the paper as a missing reply is improper because applicant fully responded to the restriction requirement and there was no NOTICE TO COMPLY WITH THE REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCELOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURE mailed by the Office. Applicants did not dispute any of the remaining adjustments.

Applicants arguments are persuasive. A review of the file history reflects that the Office mailed the restriction requirement without any notice relating to noncompliance of the sequence listings. Accordingly, applicants reply to the notice completely addressed all of the requirements in the notice. When applicants submitted a second notice relating to the sequence listings, applicants are entitled to three months to reply to such notice. Applicants response on September 5, 2003 should not have been treated as an omission. Accordingly, the 137-day reduction pursuant to 37 CFR 1.704(c)(7) is in error. Overall, the correct amount of PTA is forty days. The Office delayed pursuant to 37 CFR 1.702(a)(1) by a period of 227 days and applicants delayed pursuant to 37 CFR 1.705(b) on three separate occasions (1+92+94 days) for a reduction period of 187 days.

The USPTO acknowledges that any delays pursuant to 37 CFR 1.702(a)(4) and 1.702(b) will be added at the time of the issuance of the patent and will be reflected in the PTA determination provided to applicant in the issue notification letter.

After the mailing of this decision, the Office will forward this application to the Office of Publications for a prompt issuance of the patent.

Applicants have been assessed the $200.00 fee pursuant to 37 CFR 1.18(e). No additional fees are necessary in deciding this petition.

Any questions concerning this decision should be directed to Kery Fries, Office of Patent Legal Administration Petitions at 571-272-7757.

Kery A. Fries
Senior Legal Advisor,
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: Adjusted PAIR calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

8-6-08

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

Patent No. : 7,332,330 B2
Ser. No. : 09/949,575
Inventor(s) : H. David Humes, et. al.
Issued : February 19, 2008
Title : DEVICE AND METHOD TO MAINTAIN VASCLARIAZAION NEAR IMPLANT
Docket No. :

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 or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

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

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

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

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

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

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

Eva James
For Mary Diggs
Decisions & Certificates
of Correction Branch
(703) **308-9390 ext. 124** or 105

Hamilton, Brook, Smith & Reynolds, P.C.
530 Virginia Road
P.O. Box 9133
Concord, Massachusetts 01742-9133

ej

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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

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DEC 10 2008

In re Patent No. 7,332,330 :
Issue Date: February 19, 2008 :
Application No. 09/949,575 : ON PETITION
Filed: September 11, 2001 :
Patentee(s): H. David Humes, et. al. :

This is a decision on the request under 37 CFR 3.81(b) filed on October 1, 2008, to add the second name of an assignee on the front page of the above-identified patent by way of a Certificate of Correction.

The request is **GRANTED.**

The Certificates of Correction Branch will be notified of this decision granting the petition under 37 CFR 3.81(b) and directing issuance of the requested Certificate of Correction.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. Inquiries regarding the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA PA 19103

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JUN 0 6 2006

OFFICE OF PETITIONS

In re Application of	:	
Ruckart, John P.	:	DECISION ON PETITION
Application No. 09/949,587	:	TO WITHDRAW
Filed: September 10, 2001	:	FROM RECORD
Attorney Docket No. 20009.0231US01	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 9, 2005.

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

A review of the file record indicates that the power of attorney to the attorneys/agents associated with Customer Number 38952 has been revoked by the assignee of the entire interest of the patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

There is an outstanding Office action mailed March 10, 2006 that requires a reply.

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 Petitions Examiner Liana Chase at 571-272- 3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

David Bucci
Petitions Examiner
Office of Petitions

cc:

WITHERS & KEYS FOR BELL SOUTH
P. O. BOX 71355
MARIETTA GA 30007-1355

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 03/09/2006

TO SPE OF : ART UNIT 2600 (2651)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,930,843

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

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-922
Palm location **7580** - Tel. No. 305-8309

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

Ok to enter Ref. DE 32 15 821 as requested in COCIN?

Ernest C. White, LIE305-8339
Certificates of Correction Branch

Thank You For Your Assistance

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

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

Comments:

ANDREA WELLINGTON
SUPERVISORY PATENT EXAMINER

2627

SPE **Art Unit**

PTO/SB/44 (04-04)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO : 6930843

DATED : August 16, 2005

INVENTOR(S) : YUKA AOYAGI, ET AL

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

* * *One title page, item 56, References Cited under Foreign Patent Document
* * *Please add German Reference DE 32 15 821 A1 11/1982* * *

MAILING ADDRESS OF SENDER:
PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. Box 10500
McLean, VA 22102

PATENT NO. 6930843

No. of additional copies
⇨ 1

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7-14-06

TO SPE OF : ART UNIT 1648

SUBJECT : Request for Certificate of Correction for Appl. No.: 09949650 Patent No.: 7056735

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**.

V Jackson
Certificates of Correction Branch
703-308-9390 ext. 114

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

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

Bruce Campell — SPE
1648 — Art Unit

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Paper No.

Edward A. Pennington
SWIDLER BERLIN LLP
3000 K Street, NW
Box IP
Washington, DC 20007

MAIL

MAY 16 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
James D. Flavin
Application No. 09/949,657
Filed: September 12, 2001
For: ONE TO MANY MAPPING OF APPLICATION SERVICE PROVISION

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed April 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. § 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 April 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: FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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Paper No.

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MAY 16 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

Edward A. Pennington
SWIDLER BERLIN LLP
3000 K Street, NW
Box IP
Washington, DC 20007

In re Application of:
James D. Flavin
Application No. 09/949,658
Filed: September 12, 2001
For: METHOD AND APPARATUS FOR BROKERING AND PROVISIONING OF WINDOWS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed April 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. § 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 April 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.

for James R. Matthews

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3613

cc: FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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Paper No.

Edward A. Pennington
SWIDLER BERLIN LLP
3000 K Street, NW
Box IP
Washington, DC 20007

MAIL

MAY 16 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of:
James D. Flavin
Application No. 09/949,659
Filed: September 12, 2001
For: ONE TO MANY MAPPING OF APPLICATION SERVICE PROVISION

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed April 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. § 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 April 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

/Vincent N. Trans/
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
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(571) 272-3613

cc: FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041

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OFFICE OF PETITIONS

STERNE KESSLER GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE NW
WASHINGTON, DC 20005

In re Application of
Todd L. Brooks et al
Application No. 09/949,662
Filed: September 12, 2001
Attorney Docket No. 1875.0840001

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

This is a decision on the petition, filed September 26, 2003, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 15, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

Upon receipt of the file in the Office of Petitions, the file will be forwarded to Technology Center AU 2819 for processing of the request for continued examination under 37 CFR 1.114.

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

[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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TECHNOLOGY CENTER 2100

OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

In re Application of: AOKI, et al.
Application No. 09/949,666
Filed: September 12, 2001
For: PORTABLE TERMINAL AND DATA OUTPUT CONTROL SYSTEM

DECISION GRANTING PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on August 11, 2008 requesting that the period for reply set forth in the Office communication (final rejection) mailed on June 23, 2008 be reset and the Office action remailed.

The petition is **GRANTED**.

Petitioner provided a statement that the Office communication in question was not received at the correspondence address of record. In addition, Petitioner provided: a statement that the docket records were searched; a copy of the docket records at the address of record; as well as reference to the docket record. In addition, a review of the instant file record reveals that the Office action was in fact returned to the Office on June 24, 2008 as undelivered. Finally, the petition was filed within two weeks of the August 6, 2008 date of date of discovery of and obtainment (downloading) of the Office action.

Accordingly, the Petition is **GRANTED**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to **REDATE** the response period for the final Office action. Note, the response period for the original Office action mailed June 23, 2008, is **hereby reset** and continues to run from the admitted date of discovering and viewing on PAIR of **August 6, 2008**. Note, a courtesy copy of the June 23, 2008 final Office action is attached hereto.

Any inquiry concerning this decision should be directed to Brian Johnson whose telephone is (571) 272-3595.

Brian L. Johnson
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and Information Security

Office Action Summary	Application No.	Applicant(s)	
	09/949,666	AOKI ET AL.	
	Examiner	Art Unit	
	KAMAL B. DIVECHA	2151	

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

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ 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:

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)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20071026*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Action is in response to communications filed 3/6/08.

Claims 1-7, 10-16, 19-33 are pending in this application.

Claims 8-9, 17-18 were previously cancelled.

Response to Arguments

Applicant's arguments in the submission filed 3/6/08 with respect to claims above have been fully considered but are moot in view of the new ground(s) of rejection, as necessitated by the substantial amendments.

Independent claim 1 now recites:

A portable terminal...said data output control device comprising...**plurality of data format conversion devices** that perform data format conversion, **each of plurality of data format conversion devices corresponding to at least one of said plurality of output terminals...wherein said data output control device generates (1) output terminal attribute data, (2) guidance data...(3) preview data...**

As discussed in the Personal Interview, See Interview Summary mailed 3/11/08; the inclusion of plurality of conversion devices is considered obvious in the art, as evidenced by Wolff reference. In other words, replacing a single conversion device with plurality of conversion devices is obvious in the art.

Claim Interpretation

Output terminal attribute data, based on the broadest reasonable interpretation in light of the specification, e.g. pg. 23 [0074], can be interpreted as data including location of the output terminal, type of the output terminal, status report or data regarding the output terminal, services offered by the output terminals, etc.

Guidance data, based on the broadest reasonable interpretation in light of the specification, e.g. pg. 24 [0075], can be interpreted as any help data, location data, map data, etc.

Preview data, based on the broadest reasonable interpretation in light of the specification, e.g. pg. 24 [0075], can be interpreted as print preview data of a print object or document.

Eldridge, at column 10 L35-67, teaches the transaction server generating, by retrieving the data from the directory services regarding the available document services offered by the output terminals, and transmits a list of available services that reflects the location information, offered by the output terminals to the mobile terminals for user's selection, e.g. fig. 8.

Kageyama, at column 16 L51-67 and col. 22 L59 to col. 23 L6, teaches generating output terminal attribute data and guidance data based on a relationship between the portable terminal and at least one of said plurality of output terminals, and further informs the user with such information, and

Wolff explicitly discloses output control device generating hypertext map of printers on network, e.g. col. 6 L20-32, and preview data formatted by the data format conversion device based on the content of an object to be printed to be verified and manipulated by a user, e.g. fig. 4 item #460, fig. 7, col. 6 L1 to col. 7 L8, col. 7 L65 to col. 8 L16.

As such, the combination of Eldridge, Kageyama and Wolff discloses the amendatory claim limitations.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 10/26/07 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

Claims 1-7, 10-16 and 19-33 are objected to because of the following informalities:

Claim 1 recites the limitation "the data format conversion device" (4th limitation). There is insufficient antecedent basis for this limitation in the claim. However, it seems the limitation is referring to plurality of data format conversion devices.

Claims 2-7, 10-16 and 19-33 are objected for the same reasons as set forth in claim 1.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-5, 7, 10-14, 16 and 19-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldridge et al. (hereinafter Eldridge, US 6,430,601 B1) in view of Kageyama et al. (hereinafter Kageyama, US 5,625,757), and further in view of Wolff (US 6,738,841 B1).

As per claim 1, Eldridge discloses a portable terminal that communicates with a data output control device (fig. 1 item #118, col. 3 L22-65), the portable terminal being sending output requests for data (fig. 5-10), the data output control device being coupled to the portable terminal, a plurality of output terminals situated at various locations for outputting data (fig. 1, item #102, 110, fig. 2: printers, scanners, fax) and a data storing terminal storing data (fig. 1 item

#104, 134, fig. 2 item #126: document or file server), via a network, said data output control device (fig. 1) comprising:

an obtaining device that obtains data relating to said data output requests from said portable terminal (col. 4 L25-67, col. 9 L16 to col. 10 L67, col. 11 L1-30); and

an output device that outputs data obtained by said obtaining device to an output terminal selected (col. 9 L16-30, col. 10 L7-67, col. 11 L1-30),

wherein the data output control device is coupled with a data format conversion device that performs data format conversion, the data format conversion device being a different device from the portable terminal (col. 5 L5-25, fig. 1 item #136, col. 11 L31-54: conversion server),

wherein said data output control device generates output terminal attribute data (col. 10 L35-67 and fig. 8),

wherein said portable terminal further comprises a terminal-side obtaining device that obtains data from said data storing terminal, a display device that displays data obtained by said terminal-side obtaining device (fig. 1 item #118, col. 3 L22-50: communicator includes a obtaining unit and display), an input device that inputs output requests for data displayed by said display device (fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67), and a data output request originating device that sends data output requests input by said input device to said data output control device (col. 11 L1-54: sending print request).

However, Eldridge does not disclose an output control device comprising a selection device that selects one or more of said plurality of output terminals based on the relationship between the portable terminal (i.e. the user) and the output terminals; plurality of conversion devices, each of said plurality of conversion devices corresponding to at least one of said

plurality of output terminals, wherein said data output control device generates (2) guidance data based on a relationship between the portable terminal and at least one of said plurality of output terminals and (3) preview data formatted by said data format conversion device and based on the content of an object to be printed to be verified and manipulated by a user, and wherein the data output control device receives a decision signal from the portable terminal selecting one of said one or more plurality of terminals selected by the selecting device

Kageyama explicitly discloses an output control device comprising a selection device that selects one or more of plurality of output terminals based on the relationship (i.e. various printer specification and/or distance between the user terminal and the output terminals) and outputs the data to an output terminal selected by the selecting device and wherein the data output device receives a decision signal from the client or user (i.e. terminal) selecting one of said one or more plurality of output terminals selected by the selecting device (col. 7 L5-55, col. 8 L23-43, col. 9 L3 to col. 10 L8, col. 16 L54 to col. 17 L8, col. 18 L26-56: client, col. 22 L31 to col. 24 L65), and control device generating guidance data based on a relationship between the portable terminal and at least one of said plurality of output terminals (col. 16 L51-67 and col. 22 L59 to col. 23 L6).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Eldridge in view of Kageyama in order to select an output terminal from a plurality of output terminals.

One of ordinary skilled in the art would have been motivated because it would have improved the print throughput, the use efficiency of the user (Kageyama: col. 9 L65 to col. 10

L9) and would have further improved the system performance, reliability, availability and serviceability of the printing system (Kageyama: col. 16 L54 to col. 17 L8).

However, Eldridge in view of Kageyama does not disclose plurality of conversion devices, each of said plurality of conversion devices corresponding to at least one of said plurality of output terminals, and wherein said data output control device generates (3) preview data formatted by said data format conversion device and based on the content of an object to be printed to be verified and manipulated by a user.

Wolff explicitly discloses plurality of conversion devices, each of said plurality of conversion devices corresponding to at least one of said plurality of output terminals (fig. 2, col. col. 6 L64 to col. 7 L8: formatting may be implemented at server 220 and 230), and wherein said data output control device generates (3) preview data formatted by said data format conversion device and based on the content of an object to be printed to be verified and manipulated by a user (fig. 4 item #460, fig. 7, col. 6 L1 to col. 7 L8, col. 7 L65 to col. 8 L16).

Therefore, it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Eldridge and Kageyama in view of Wolff in order to implement formatting at plurality of devices and presenting the preview print data.

One of ordinary skilled in the art would have been motivated because it would have enabled formatting at more than one server and present the user with a print view page of the document (Wolff: col. 6 L1-20, col. 7 L1-8).

As per claim 2, Eldridge discloses the system further comprising an input items for prompting input to said input device are displayed on said display device along with data obtained by said terminal-side obtaining device, and wherein said data output request originating

device sends output requests for data displayed by said display device to said data output control device, in the event that said input items are selected as input by said input device (fig. 5 to fig. 10, col. 10 L7 to col. 11 L54: user of mobile device inputs print command and the mobile device sends the request across the network).

As per claim 3, Eldridge discloses the system further comprising input items for prompting input to said input device displayed on said display device as menu items separate from said data obtained by said terminal-side obtaining device, and wherein said data output request originating device sends output requests for data displayed by said display device to said data output control device, in the event that said input items are selected as input by said input device (fig. 5 to fig. 10, col. 10 L7 to col. 11 L54).

As per claim 4, Eldridge discloses a system wherein the input device is an input button (fig. 5 to fig. 10, col. 10 L7 to col. 11 L54).

As per claim 5, Eldridge discloses a portable terminal which uses a data output control device, the portable terminal sending output requests for data, the data output control device communicably connects to the portable terminal and a plurality of output terminals situated at various locations for outputting data, via a network, said data output control device (fig. 1 item #118, col. 3 L22-65) comprising:

- an output device that outputs data relating to said data output request to an output terminal selected (col. 9 L16-30, col. 10 L7-67, col. 11 L1-30);

wherein the data output control device is coupled with a data format conversion device that performs data format conversion, the data format conversion device being a different device from the portable terminal (col. 5 L5-25, fig. 1 item #136, col. 11 L31-54),

wherein said portable terminal further comprises a plurality of communicating devices that perform communication with said data output control device with different communication methods (fig. 1: IR and RF communications, col. 3 L22-65),

a communication path selecting device that selects from said plurality of communicating devices a communicating device which is currently communicable with said data output control device (col. 6 L1-42: mobile terminal establishing communications using IR link implies that there is selection of communication device) and a data output request originating device that sends said data output requests to said data output control device with the communication device selected by said communication path selecting device (fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67, col. 11 L1-54).

However, Eldridge does not disclose an output control device comprising a selection device that selects one or more of said plurality of output terminals based on the relationship between the portable terminal (i.e. the user) and the output terminals, and wherein the data output control device receives a decision signal from the portable terminal selecting one of said one or more plurality of terminals selected by the selecting device.

Kageyama explicitly discloses an output control device comprising a selection device that selects one or more of plurality of output terminals based on the relationship (i.e. various printer specification and/or distance between the user terminal and the output terminals) and outputs the data to an output terminal selected by the selecting device and wherein the data output device receives a decision signal from the client or user (i.e. terminal) selecting one of said one or more plurality of output terminals selected by the selecting device (col. 7 L5-55, col. 8 L23-43, col. 9 L3 to col. 10 L8, col. 16 L54 to col. 17 L8, col. 18 L26-56: client, col. 22 L31 to col. 24 L65).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Eldridge in view of Kageyama in order to select an output terminal from a plurality of output terminals.

One of ordinary skilled in the art would have been motivated because it would have improved the print throughput, the use efficiency of the user (Kageyama: col. 9 L65 to col. 10 L9) and would have further improved the system performance, reliability, availability and serviceability of the printing system (Kageyama: col. 16 L54 to col. 17 L8).

As per claim 7, Eldridge discloses the apparatus further comprising at least one of long-distance wireless LAN and a short-distance wireless LAN (fig. 1: IR is short distance and RF is long distance, col. 3 L22-65).

As per claim 19, Eldridge further discloses a system wherein when requesting data output by an output terminal, data transmitted from the portable terminal is an output request only (such as print request only, fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67, col. 11 L1-54, fig. 5-10).

As per claim 20, Eldridge further discloses a system wherein when requesting data output by an output terminal; data transmitted from the portable terminal is an output request only (such as print request only, fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67, col. 11 L1-54, fig. 5-10).

As per claim 23, Eldridge in view of Kageyama discloses the system wherein the data format conversion device performs conversion to a data format that is outputable by an output terminal (col. 5 L5-25, fig. 1 item #136, col. 11 L31-54).

However, Eldridge in view of Kageyama does not disclose the process of performing the conversion to a data format that is displayable by the portable terminal.

Wolff, from the same field of endeavor explicitly discloses the process of performing conversion and/or transcoding documents to a data format that is displayable by the portable terminal (col. 4 L55 to col. 5 L20, col. 5 L50 to col. 6 L20 and fig. 10).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Eldridge and Kageyama in view of Wolff in order to perform conversion on documents to a data format that is displayable by the portable terminal.

One of ordinary skilled in the art would have been motivated because it would have displayed the document at the portable device and/or present the document to the user of portable device with additional features (Wolff, col. 5 L50-67).

As per claim 32, Eldridge discloses the system wherein the output terminal being a printing device having a printer section (such as print request only, fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67, col. 11 L1-54, fig. 5-10).

As per claim 33, Eldridge discloses the system wherein the printing device receives data in a predetermined data format and exclusively prints the data in the predetermined data format (col. 11 L1-53: the conversion service converts only if necessary).

As per claims 10-14, 16, 21, 22, 24-25, 26-31, they do not teach or further define over the limitations in claims 1-5, 7, 19, 20, 23, 32 and 33. Therefore claims 10-14, 16, 21, 22, 24-25, 26-31 are rejected for the same reasons as set forth in claims 1-5, 7, 19, 20, 23, 32 and 33.

2. Claims 6 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldridge et al. (hereinafter Eldridge, US 6,430,601 B1) in view of Kageyama et al. (hereinafter Kageyama, US 5,625,757), and further in view of Doviak et al. (hereinafter Doviak, US 6,418,324 B1).

As per claim 6, Eldridge in view of Kageyama discloses the system wherein communication path selecting device and data output request originating device send said data output request to said data output control device by one of the said plurality of communication devices (fig. 5 to fig. 10, col. 6 L1-42, col. 9 L16 to col. 10 L67, col. 11 L1-54).

However, Eldridge in view of Kageyama does not disclose the system wherein in the event that communication with said data output control device fails, sending the data output request to said data output control device by another of said plurality of communication devices.

Doviak, explicitly discloses an error detection and retransmission mechanism i.e. delivery failure detection and retry mechanism for delivering the messages including resending the message to the destination by utilizing another one of the plurality of the network interface or devices (fig. 27-29, fig. 34-36, col. 11 L54-65, col. 13 L10-24).

Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Eldridge and Kageyama in view of Doviak in order to resend the message through a different network interface or device.

One of ordinary skilled in the art would have been motivated because it would have provided a mechanism for detecting and correcting the transmission errors (Doviak, col. 11 L54-67).

As per claim 15, it does not teach or further define over the limitations in claim 6. Therefore claim 15 is rejected for the same reasons as set forth in claim 6.

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Sahay et al., US 5,594,840: Apparatus and Method for diagnosing the operation of a printing system.

b. Yamamoto et al., US 6,553,431: Information processing system.

c. Kitada et al., US 2002/0156834 A1: Internet printing.

d. Lee, US 7,051,085 B1: Remote Saving Method of the search information on the Internet.

e. Kemp et al., US 2002/0078160 A1: Printing over the Internet.

f. Ackaret, US 6,799,297 B2: Form Printing Solutions.

g. Alam et al., US 6,336,124 B1: Conversion data representing a document to other formats for manipulation and display.

h. Yacoub, US 6,452,692 B1: Networked Printer Server.

Conclusion

Examiner's Remarks: The teachings of the prior art should not be restricted and/or limited to the citations by columns and line numbers, as specified in the rejection. Although the specified citations are representative of the teachings of the art and are applied to specific

limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

In the case of amendments, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and support, for ascertaining the metes and bounds of the claimed invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is (571)272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KD
AU 2151
/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/949,666	09/12/2001	Mikio Aoki	110421	1026

25944 7590 06/23/2008
OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

EXAMINER	
DIVECHA, KAMAL B	
ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
06/23/2008	PAPER

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

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

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TECHNOLOGY CENTER 2100

OLIFF & BERRIDGE, PLC
P.O. BOX 320850
ALEXANDRIA, VA 22320-4850

In re Application of: AOKI, et al.
Application No. 09/949,666
Filed: September 12, 2001
For: PORTABLE TERMINAL AND DATA OUTPUT CONTROL SYSTEM

DECISION GRANTING PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on August 11, 2008 requesting that the period for reply set forth in the Office communication (final rejection) mailed on June 23, 2008 be reset and the Office action remailed.

The petition is **GRANTED**.

Petitioner provided a statement that the Office communication in question was not received at the correspondence address of record. In addition, Petitioner provided: a statement that the docket records were searched; a copy of the docket records at the address of record; as well as reference to the docket record. In addition, a review of the instant file record reveals that the Office action was in fact returned to the Office on June 24, 2008 as undelivered. Finally, the petition was filed within two weeks of the August 6, 2008 date of date of discovery of and obtainment (downloading) of the Office action.

Accordingly, the Petition is **GRANTED**.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to **REDATE** the response period for the final Office action. Note, the response period for the original Office action mailed June 23, 2008, is **hereby reset** and continues to run from the admitted date of discovering and viewing on PAIR of **August 6, 2008**. Note, a courtesy copy of the June 23, 2008 final Office action is attached hereto.

Any inquiry concerning this decision should be directed to Brian Johnson whose telephone is (571) 272-3595.

Brian L. Johnson
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and Information Security

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ALEXANDRIA, VA 22320

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DEC 19 2005

OFFICE OF PETITIONS

In re Application of :
Mikio Aoki et al :
Application No. 09/949,667 : ON PETITION
Filed: September 12, 2001 :
Attorney Docket No. 110420 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed December 13, 2005, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 30, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

This matter is being referred to Technology Center AU 2151 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed IDS.

Wan Laymon
Petitions Examiner
Office of Petitions

---

[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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RAYMOND A. JOAO, ESQ.
122 BELLEVUE PLACE
YONKERS NY 10703

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APR 18 2005

OFFICE OF PETITIONS

In re Application of :
Raymond A. Joao et al :
Application No. 09/949,694 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. JB010 :

This is a decision on the petition, filed April 18, 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 14, 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 2683 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

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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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MAR 22 2006

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

RAYMOND A. JOAO, ESQ.
122 BELLEVUE PLACE
YONKERS NY 10703

In re Application of
JOAO, et. al.
Application No. 09/949,694
Filed: September 10, 2001
For: TRANSACTION SECURITY APPARATUS

DECISION ON PETITION
UNDER 37 CFR 1.59

This is a response to the petition under 37 CFR 1.59(b), filed February 23, 2006, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte Quayle* action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests that the fourteen documents submitted in the Information Disclosure Statement, filed February 23, 2006 with the instant petition, 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, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material", with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material". If the information is not considered by the examiner to be material, the information will be returned to applicant.

The document in question will not be available to the public during prosecution.

Mark Powell
Director
Technology Center 2600
Communications

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/949,694	09/10/2001	Raymond Anthony Joao	JB010	9806

7590 04/13/2006

RAYMOND A. JOAO, ESQ.
122 BELLEVUE PLACE
YONKERS, NY 10703

EXAMINER	
FERGUSON, KEITH	
ART UNIT	**PAPER NUMBER**
2617	

DATE MAILED: 04/13/2006

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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In re Application of JOAO ET AL.
Appl. No.: 09/949,694
Filed: September 10, 2001
For: TRANSACTION SECURITY APPARATUS

DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed February 23, 2006, to expunge information from the above identified application.

The petition is granted.

Petitioner requests that the fourteen documents submitted in the Information Disclosure Statement, filed February 23, 2006, 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 examiner of record 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. Note: Petitioner specifically requested that he be allowed to pick-up the documents in person. Therefore, the documents will be retained by the undersigned until collected by petitioner at an agreed upon date within the next two weeks.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/949,694	09/10/2001	Raymond Anthony Joao	JB010	9806

7590 04/20/2006

RAYMOND A. JOAO, ESQ.
122 BELLEVUE PLACE
YONKERS, NY 10703

EXAMINER
FERGUSON, KEITH

ART UNIT	PAPER NUMBER
2617	

DATE MAILED: 04/20/2006

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

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P.O. Box 1450
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In re Application of JOAO ET AL.
Appl. No.: 09/949,694
Filed: September 10, 2001
For: TRANSACTION SECURITY APPARATUS

SUPPLEMENTAL DECISION ON PETITION UNDER 37 CFR 1.59

This is a decision on the petition under 37 CFR 1.59(b), filed February 23, 2006, to expunge information from the above identified application and is a supplemental decision to the decision mailed April 13, 2006.

The petition is granted.

Petitioner requests that the fourteen documents submitted in the Information Disclosure Statement, filed February 23, 2006; as well as the 2 documents regarding Information From Related Litigation, 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 examiner of record to not be material to the examination of the instant application. The decision mailed April 13, 2006 inadvertently failed to mention the two documents from 'Related Litigation'.

Applicant is required to retain all of 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.

Note: Petitioner specifically requested that he be allowed to pick-up the documents* in person. Therefore, the documents will be retained by the undersigned until collected by petitioner at an agreed upon date within the next two weeks.

Krista Zele
Special Program Examiner
Technology Center 2600
Communications

* Attachment: listing of documents

I. Information Disclosure Statement:

a. User Information Manual (1988-1997) - Jack Henry & Associates (Responsive to RPD 44), Documents identified as SHB 00715-839;

b. Deposition of Joe Nicholas;

c. SEU Source Listing - printed 2/11/04 (2 pages), (Nicholas Deposition Exhibit 13), Documents identified as SHB 00861-862;

d. Jack Henry source code listing for STOP PAYMENT function of Cash Management program, (Nicholas Deposition Exhibit 14), Documents identified as SHB 00905-925;

e. Nicholas Deposition Exhibit 9, Excerpts from User Manual, Documents identified as SHB 00715-725 and SHB 00774-781;

f. Exhibits 1, Joe Nicholas Deposition (Chronology), Documents identified as SHB 02178-80;

g. Nicholas Deposition Exhibit 1, Witness' Timeline;

h. Exhibit 16, Joe Nicholas Deposition (SDA Work Display; Cash Management), Documents identified as SHB 02181-91;

i. Nicholas Deposition Exhibit 16, Cash Management Control Screen;

j. Deposition of Jon Henley;

k. Henley Deposition Exhibit 16-A, Page from Nicholas Exhibit 16;

l. Henley Deposition Exhibit 23, Witness Diagram;

m. Henley Deposition Exhibit 24, Witness Diagram; and

n. Henley Deposition Exhibit 28, Witness Diagram.

II. Communication Regarding Information From Related Litigation:

a. ANSWERS TO DEFENDANTS' SECOND SET OF INTERROGATORIES; and

b. ANSWER TO DEFENDANTS' INTERROGATORY No. 24.

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RAYMOND A. JOAO, ESQ.
122 BELLEVUE PLACE
YONKERS, NY 10703

MAILED

MAR 15 2010

OFFICE OF PETITIONS

In re Patent No. 7,096,003 :
Issue Date: August 22, 2006 :
Application No. 09/949,694 : NOTICE
Filed: September 10, 2001 :
Attorney Docket No. JB010

This is a notice regarding your request for acceptance of a fee deficiency submission under 37 CFR 1.28. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 CFR 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. **See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).**

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

Your fee deficiency submission under 37 CFR 1.28 is hereby **ACCEPTED**.

Inquiries related to this communication should be directed to Irvin Dingle at (571) 272-3210.

Irvin Dingle
Petitions Examiner
Office of Petitions

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

UR

MAY 20 2003

PAPER NO. 14

In re Application of	:	
Earnest A. Voisin	:	
Serial No:09/949,704	:	PETITION UNDER
Filed: September 10, 2001	:	M.P.E.P. 708.02, IV
For: PROCESS OF ELIMINATION OF BACTERIA	:	
IN SHELLFISH, OF SHUCKING SHELLFISH	:	
AND AN APPARATUS THEREFOR	:	

This is in response to the petition filed march 12, 2003, requesting that the above-identified application be granted Special Status under Section 708.02, IV of the MPEP and 37 CFR 1.102(c).

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

The petition is **GRANTED.**

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

Thomas S. Keaty
Keaty Professional Law Corp.
2140 World Trade Center
No. 2 Canal Street
New Orleans, LA 70130

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.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

COPY MAILED

JAN 12 2006

OFFICE OF PETITIONS

In re Application of	:	
Suzuki et al.	:	DECISION ON APPLICATION
Application No. 09/949,792	:	FOR
Filed: September 12, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No. 05905.0150	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT - PRE-GRANT," filed August 10, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to thirty-three (33) 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 **thirty-three (33)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 1, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On August 10, 2005, applicants timely submitted the instant application for patent term adjustment[1]. Applicants dispute the reduction of 154 days associated with the filing of a request for continued examination (RCE) on March 11, 2004. Applicants state the RCE was actually filed on November 10, 2003. Per the request of the examiner, because the RCE had been misplaced, replacement copies of the RCE papers including a

[1] PALM records indicate that the Issue Payment was filed on August 26, 2005.

copy of the date stamped postcard showing the original filing date of the RCE were submitted on March 11, 2004. Applicants also request an additional period of adjustment of 78 days for Office delay in responding to the RCE filed November 10, 2003.

Applicants state that the application is not subject to a terminal disclaimer.

A review of the record confirms that applicants established that the RCE was originally filed on November 10, 2003. In view thereof, applicants delay in filing a response in compliance with § 1.113(c) to the final Office action mailed July 9, 2003 is 32 days, not 154 days. See § 1.704(b). Moreover, given that the response was actually received on November 10, 2003, a period of adjustment should have been entered for the Office delay. Specifically, the RCE was received on November 10, 2003; however, the Office did not mail a non-final Office action in response until May 27, 2004, four months and 78 days later. The period of adjustment pursuant to § 1.703(a)(3) is 78 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 33 days.

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Patent Publication for issuance of the patent. The patent term adjustment indicated on the patent will include any additional patent term adjustment accrued for Office delay in issuing the patent after payment of the issue fee and all outstanding requirements having been met.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 3/8/06

TO SPE OF : ART UNIT 2817

SUBJECT : Request for Certificate of Correction for Appl. No.: 09949845 Patent No.: 6952138

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

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

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

Valerie Fockler

Certificates of Correction Branch

703-308-9390 ext. 114

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: OK

SPE

2817
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JJGJR.: 07-06

Paper No: __

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

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JUL 19 2006

OFFICE OF PETITIONS

In re Application of :
Zhu, et al. :
Application No. 09/949,868 :
Filing Date: 10 September, 2001 :
Attorney Docket No.: 2001P15196 US01 :

DECISION

This is a decision on the petition filed on 9 June, 2006, 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(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the Notice of Allowance/Allowability and Fees Due and Notice of Allowability mailed on 18 November, 2005, with reply due absent extension of time on or before 21 February, 2006;
- the instant application went abandoned after midnight 21 February, 2006;
- the attempt to pay the Issue Fee on 24 January, 2006, failed due to insufficient funds in the designated deposit account;
- the Office mailed a Notice of Abandonment on 1 May, 2006;

- on 9 June, 2006, Petitioner filed the instant petition (with fee) and the reply in the form of fees due, and made the statement of unintentional delay.

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

---

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

Specifically, the regulations at 37 C.F.R. §10.18 provide:

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

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

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

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

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

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

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

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

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(4) Imposing a monetary sanction;
(5) Requiring a terminal disclaimer for the period of the delay; or
(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See § 10.23(c)(15).
[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; paras. (a) & (b) revised, paras. (c) & (d) added, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a) revised, 69 FR 56481, Sept. 21, 2004, effective Oct. 21, 2004]

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,[7] 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]))

---

[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] The test of diligence in the prosecution of an application before the Commissioner is, in the context of ordinary human affairs, the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

[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.

As to the Allegation
of Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

The petition under 37 C.F.R. §1.137(b) hereby is **granted**.

The instant 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20080423

DATE : April 23, 2008

TO SPE OF : ART UNIT 2625

SUBJECT : Request for Certificate of Correction on Patent No.: 7061642

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:

Changes do not add any new matter or change the scope of the invention.

SPE: /Mark Zimmerman/ Art Unit 2625

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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APR 09 2004

Dekel Patent Ltd.
Beit HaRof"im
Room 27
18 Menuha VeNahala Street
Rehovot, 76209
Israel

Paper No.

In re Application of	:	DECISION ON PETITION
Moshe Ein-Gal	:	TO WITHDRAW
Serial No. : 09/949,885	:	HOLDING OF
Filed : September 12, 2001	:	ABANDONMENT
For : Non-Cylindrical Acoustic Wave Device	:	

This is a decision on petitioner's request filed February 11, 2004, to review the holding of abandonment mailed January 26, 2004 for failure to respond to the Office action mailed February 26, 2003. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response, the response bearing a certificate of facsimile transmission dated April 27, 2003. Petitioner has also included a copy of the Auto-Reply Facsimile Transmission from the Patent Office confirming transmission of the papers in question on April 27, 2003, and a statement from the person who facsimiled the response attesting to the submission of the response.

In view of the above, the Notice of Abandonment mailed January 26, 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 April 27, 2003.

Summary: Holding of Abandonment Withdrawn.

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

ak/3/30/04

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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SAMUEL H. DWORETSKY
AT & T CORP.
P.O. BOX 4110
MIDDLETOWN, NJ 07748-4110

COPY MAILED

JUN 24 2005

OFFICE OF PETITIONS

In re Application of :
William Hoffman, et al. :
Application No. 09/949,892 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 2000-0207 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 25, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee in a timely manner in reply to the Notice of Allowance mailed November 23, 2004, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on February 24, 2005.

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 future correspondence solely to the address of record.

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

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

This application matter is being forwarded to the Publishing Division for further processing.

Retta Williams

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

cc: Thomas H. Jackson
Banner & Witcoff
1001 G Street, NW, 11th Floor
Washington, DC 20001

HH $Sector

COPY OF PAPERS ORIGINALLY FILED

OIPE JC176 FEB 26 2002 PATENT & TRADEMARK OFFICE

PATENT APPLICATION

OUR FILE NO. 20000023.ORI

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re App	:	James E. Blood, et al.
S.N.	:	09/949,910
Filed	:	September 10, 2001
For	:	MULTI-FOLDED PRINTED WIRING CONSTRUCTION FOR AN IMPLANTABLE MEDICAL DEVICE

TRANSMITTAL OF MISSING PARTS OF APPLICATION

Box Missing Parts
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

In response to the Notice to File Missing Parts of Nonprovisional Application Filed under 37 CFR 1.53(b)--Filing Date Granted bearing a date mailed of October 11, 2001 (copy attached), submitted herewith please find three (3) executed Supplemental Declaration, Power of Attorney and Petition forms (one signed by each inventor), a Petition for Extension of Time as well as a check in the amount of $530.00 to cover the surcharge for a large entity for the late filing of the Declaration and a two-month extension fee.

The Commissioner is authorized to charge any additional fees or refund any overpayment under 37 CFR 1.16 and 1.17 which may be required by this paper to Deposit Account No. 08-1265.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

Thomas J. Nikolai
Reg. #19283
Attorneys for Applicant
900 Second Avenue South, Suite 820
Minneapolis, MN 55402
(612) 339-7461

OIPE JC176
FEB 2 6 2002
PATENT & TRADEMARK OFFICE

CERTIFICATE OF MAILING

I hereby certify that the foregoing Transmittal of Missing Parts of Application in application Serial No. 09/949,910, filed September 10, 2001 of James E. Blood, et al., and entitled MULTI-FOLDED PRINTED WIRING CONSTRUCTION FOR AN IMPLANTABLE MEDICAL DEVICE and three (3) executed Supplemental Declarations, a Petition for Extension of Time and a check in the amount of 530.00 are being deposited with the United States Postal Service as First Class mail, postage prepaid, in an envelope addressed to: Box Missing Parts, Commissioner of Patents and Trademarks, Washington, D. C. 20231 on February 4, 2002.

Thomas J. Nikolai
Attorney for Applicants

Date of Signature: February 4, 2002.

#7

FEB 2 6 2002
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/949,910	09/10/2001	James E. Blood	20000023.ORI

CONFIRMATION NO. 1502

23595
NIKOLAI MERSEREAU & DIETZ, P.A.
820 INTERNATIONAL CENTRE
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402

FORMALITIES LETTER

OC000000006888843

Date Mailed: 10/11/2001

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 oath or declaration is unsigned.
- 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 $ 130.**

A copy of this notice MUST be returned with the reply.

Mak

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 3 - OFFICE COPY

03/04/2002 EEKUBAY1 00000057 09949910

01 FC:105 130.00 OP

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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HUMAN GENOME SCIENCES INC
INTELLECTUAL PROPERTY DEPT.
14200 SHADY GROVE ROAD
ROCKVILLE MD 20850

COPY MAILED

JAN 31 2006

OFFICE OF PETITIONS

Applicant: Ruben et al.
Appl. No.: 09/949,925
Filing Date: Septeber 12, 2001
Title: 67 HUMAN SECRETED PROTEINS
Attorney Docket No.: PZ023P2
Pub. No.: US 2005/0239059 A1
Pub. Date: October 27, 2005

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221(b), filed on December 22, 2005, for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course, unless the patent issues before the application is republished.

Inquiries relating to this matter may be directed to Mark O. 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DR. LOUIS MYERS
FISH & RICHARDSON
225 FRANKLIN STREET
BOSTON, MA 02110

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JUL 2 2 2004

OFFICE OF PETITIONS

In re Application of
Kenneth L. Rinehart et al
Application No. 09/949,947
Filed: September 10, 2001
Attorney Docket No. 04519.00007

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3) AND
: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 22, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications, and on the petition under 37 CFR 1.78(a)(6) for the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application set forth in the amendment submitted 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;[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 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.

[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).

The instant application was filed on September 10, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

As to the benefit claim under 37 CFR 1.78(a)(6):

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 surcharge set forth in 37 CFR 1.17(t);

(2) 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; and

(3) the reference to the prior filed provisional application supplied in an application data sheet (ADS)37 CFR 1.76) or as an amendment in the first sentence of the specification following the title. See 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5)(i). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on September 10, 2001. Intermediate PCT Application No. PCT/US97/19210, was filed within twelve months of provisional Application No. 60/029,112, which was filed on October 24, 1996, for which priority is claimed. A reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title.

The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii) and 1.78(a)(5)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. §§ 120 and 365(c) and § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §§ 120 and 365(c) and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) and 37 CFR 1.78(a)(6) should <u>not</u> be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should <u>not</u> 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 Filing Receipt, which includes the priority claim to the prior-filed applications accompanies this decision on petition.

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859.

The examiner of Technology Center Art Unit 1639 will consider the claim under 35 U.S.C. § §120 and 365(c) and 37 CFR 1.78(a)(2) for the benefit of the prior-filed applications, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application.

Karen Creasy

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

ATTACHMENT : Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION – WEST BLDG.
WINTON HILL BUSINESS CENTER – BOX 412
6250 CENTER HILL AVENUE
CINCINNATI, OH 45224

COPY MAILED

AUG 16 2007

OFFICE OF PETITIONS

In re Application of :
Francesco De Buzzacarini et al :
Application No. 09/949,954 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 8485XM :

This is a decision on the petition under 37 CFR 1.137(b), filed March 2, 2007, to revive the above-identified application.

The petition is **GRANTED**.

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

This matter is being referred to Technology Center AU 1617 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Sterne, Kessler, Goldstein & Fox P.L.L.C.
1100 New York Avenue, N.W.
Washington, DC 20005

Mail Date: 04/26/2010

Applicant	: Robert W. Baynes JR.	: DECISION ON REQUEST FOR
Patent Number	: 7644125	: RECALCULATION of PATENT
Issue Date	: 01/05/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 09/950,005	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/12/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **879** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

Mintz Levin Cohn Ferris Glovsky and Popeo PC
12010 Sunset Hills Road
Suite 900
Reston, VA 20190

MAILED

JUL 0 2 2003

Technology Center 2100

In re Application of: Keith Elliston, et al.)
Application No. 09/950,006)
Filed: September 12, 2001) **DECISION ON REQUEST FOR**
For: TECHNIQUES FOR PROVIDING) **WITHDRAWAL AS ATTORNEY**
AND OBTAINING RESEARCH AND)
DEVELOPMENT INFORMATION)
TECHNOLOGY ON REMOTE)
COMPUTING RESOURCES)

This is a decision on the Request To Withdraw from Representation filed June 9, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

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: Apex Digital Systems
Attention: Ms. Genanne Zeller
8300 Colesville Road, Suite 400
Silver Spring, MD 20910

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : ~~Jan. 21, 2005~~ 2009

TO SPE OF : ART UNIT 2176
SUBJECT : Request for Certificate of Correction for Appl. No.: 09/950020 -7386790

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Magdalene Talley
Certificates of Correction Branch
703-308-9390 ext. 116

Thank You For Your Assistance

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

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

Comments: The examiner notes that only 2 of the listed errors are the fault of the USPTO: ① Col. 1, Line 27; and ② Col. 13, Lines 64-67. The remainder of the listed errors are NOT the fault of the USPTO, as clearly demonstrated by reviewing the original Specification filed by Applicant on 09/12/2001. The examiner notes that, during prosecution, Applicant did NOT amend the original Specification.

_____ _____

UNITED STATES 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.

CASELLA & HESPOS
274 MADISON AVENUE
NEW YORK, NY 10016

COPY MAILED

JUL 12 2005

OFFICE OF PETITIONS

In re Application of	:	
Itai et al.	:	ON APPLICATION FOR
Application No. 09/950,030	:	PATENT TERM ADJUSTMENT
Filed: September 10, 2001	:	
Atty Docket No. FP01-091US	:	
	:	

This is in response to the "REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT," filed January 10, 2005. Applicants dispute a 453 day reduction.

The request is **DISMISSED**.

Applicants are advised that § 1.705(b) provides the avenue before the Office for requesting reconsideration of the patent term adjustment indicated in the notice of allowance. See § 1.702-1.705. Moreover, § 1.705(b) provides that:

> An application for patent term adjustment under this section must be filed no later than the payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:
>
> (1) The fee set forth in § 1.18(e) ...

The instant request was filed after the mailing of the notice of allowance and prior to payment of the issue fee. However, neither the fee under § 1.18(e) nor a general authorization to

charge any required fees, accompanied the request. Accordingly, the request is dismissed for failure to comply with the requirement of paragraph (b)(1) to submit the fee under §1.18(e).

The Publishing Division has been advised of this decision and directed to go forward with processing of this application into a patent.

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

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

Paper No. 7

WHITHAM, CURTIS & CHRISTOFFERSON, PC
11491 SUNSET HILLS ROAD, SUITE 340
RESTON, VA 20190

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JUL 17 2002

OFFICE OF PETITIONS

In re Application of :
Freire :
Application No. 09/950,047 : DECISION DISMISSING
Filed: September 12, 2001 : PETITION
Attorney Docket No. 1539(03940014AA) :

This is a decision on the petition filed March 20, 2002, to establish that page 17 of the specification was part of the originally filed application.

On September 12, 2001, the application was filed.

On October 18, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of September 12, 2001, and advising applicants that page 17 appeared to have been omitted.

In response, the present petition was filed alleging that page 17 was deposited on September 12, 2001. In support, petitioner has submitted a postcard receipt which acknowledges receipt of "21 Pages in Specification" on September 12, 2001.[1]

Upon review of the record, page 17 has not been located. However, the evidence is convincing that the application papers deposited on September 12, 2001, included page 17, and that page 17 was subsequently misplaced in the PTO.

Since petitioner has established that page 17 was misplaced by the Office, the petition fee of $130 will be credited to petitioner's deposit account.

The Notice mailed October 18, 2001, was sent in error and is hereby vacated.

In view of the above, the petition would normally be granted. Unfortunately, although the papers filed on March 20, 2002, state they are accompanied by a copy of page 17, a copy of page 17 cannot be found in the file. Therefore, the petition must be **dismissed** since examination of the application cannot be satisfactorily performed without a copy of page 17. Petitioner should submit another copy of page 17 along with a renewed petition within two months. The renewed petition is free.

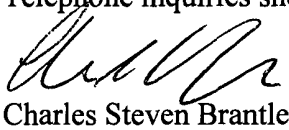
---

[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.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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



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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

WHITHAM, CURTIS & CHRISTOFFERSON, PC
11491 SUNSET HILLS ROAD, SUITE 340
RESTON, VA 20190

COPY MAILED

AUG 0 8 2002

OFFICE OF PETITIONS

In re Application of	:	
Freire	:	
Application No. 09/950,047	:	DECISION DISMISSING
Filed: September 12, 2001	:	PETITION
Attorney Docket No. 1539(03940014AA)	:	

This is a decision on the renewed petition filed July 25, 2002, to establish that page 17 of the specification was part of the originally filed application.

The petition under 37 CFR 1.53 is **dismissed**.

On September 12, 2001, the application was filed.

On October 18, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of September 12, 2001, and advising applicants that page 17 appeared to have been omitted.

In response, on March 20, 2002, a petition was filed alleging that page 17 was deposited on September 12, 2001. The evidence was convincing that the application papers deposited on September 12, 2001, included page 17, and that page 17 was subsequently misplaced in the PTO. Unfortunately, although the papers filed on March 20, 2002, stated they were accompanied by a copy of page 17, a copy of page 17 could not be found in the file. Therefore, the petition was dismissed since examination of the application could not satisfactorily be performed without a copy of page 17.

The decision mailed July 17, 2002, stated, "Petitioner should submit another copy of page 17 along with a renewed petition within two months."

In response a copy of page 17 was sent by facsimile transmission to the Office. Unfortunately, facsimile transmission introduces changes which alter page 17 from the original page submitted. For example, a header is added to the page, the font size changes, the clarity of the print changes, and the margins change. Therefore, the Office asks that petitioner mail or hand deliver a copy of page 17 identical with the page 17 originally filed.

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

Charles Steven Brantley
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. 11

WHITHAM, CURTIS & CHRISTOFFERSON, PC
11491 SUNSET HILLS ROAD, SUITE 340
RESTON, VA 20190

COPY MAILED

SEP 0 4 2002

OFFICE OF PETITIONS

In re Application of	:	
Freire	:	
Application No. 09/950,047	:	DECISION GRANTING
Filed: September 12, 2001	:	PETITION
Attorney Docket No. 1539(03940014AA)	:	

This is a decision on the renewed petition filed August 14, 2002, to establish that page 17 of the specification was part of the originally filed application.

The petition under 37 CFR 1.53 is **granted**.

On September 12, 2001, the application was filed.

On October 18, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of September 12, 2001, and advising applicants that page 17 appeared to have been omitted.

In response, on March 20, 2002, a petition was filed alleging that page 17 was deposited on September 12, 2001. The evidence was convincing that the application papers deposited on September 12, 2001, included page 17, and that page 17 was subsequently misplaced in the PTO. Unfortunately, although the papers filed on March 20, 2002, stated they were accompanied by a copy of page 17, a copy of page 17 could not be found in the file. Therefore, the petition was dismissed since examination of the application could not satisfactorily be performed without a copy of page 17.

The instant petition includes a copy of page 17.

The Notice mailed October 18, 2001 was sent in error and is hereby vacated.

The Application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 12, 2001, using the application papers filed on September 12, 2001, and the copy of page 17 filed on August 14, 2002.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700.

rvk

Mailed: JAN 13 2004 Paper No. _____

In re application of:	:	
Joe G. Rich, Sr.	:	
Serial No.: 09/950,091	:	DECISION ON
Filed: September 10, 2001	:	PETITION
For: ELECTROLYSIS FUEL CELL ENERGY PLANT	:	

This is a response to the PETITION TO REVIVE, filed March 08, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of February 02, 2004, for failure to timely file a proper response to the Office letter dated June 25, 2003 be withdrawn. The petitioner asserts that applicant timely filed a proper response to the Office letter of June 25, 2003 on September 25, 2003.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee).

A review of the petitioner's evidence provided with the instant petition indicates that the request has merit. The evidence presented is sufficient to establish that the applicants did file the proper response to the Office letter of June 25, 2003 in a timely manner. The evidence provided includes:(1) a copy of the Amendment transmitted via facsimile along with a Certificate of Transmission dated September 25, 2003; (2) a copy of Transmittal Form; and (3) a copy of the Confirmation Report from the Facsimile machine dated September 25, 2003.

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 September 25, 2003 and then forwarded to the examiner for prompt consideration.

The Petition is **GRANTED.**

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

ROBERT M. SCHWARTZ, ESQ.
RUDEN, McCLOSKY, SMITH, SCHUSTER & RUSSEL, P.A.
200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FL 33301

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

PAUL W. MARTIN
NCR CORPORATION, LAW DEPT.
3097 Satellite Blvd., 2nd Floor
Duluth, GA 30096

Mail Date: 05/21/2010

Applicant	: John C. Goodwin III	: DECISION ON REQUEST FOR
Patent Number	: 7668766	: RECALCULATION of PATENT
Issue Date	: 02/23/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 09/950,118	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/10/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **3178** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJr.:08-02

Paper 8

STEVEN J. GROSSMAN
GROSSMAN, TUCKER,
PERREAULT & PFLEGER, PLLC
795 ELM STREET/STE. 604
MANCHESTER NH 03101

COPY MAILED

AUG 1 3 2002

OFFICE OF PETITIONS

In re Application of :
Warner, et al. :
Application No. 09/950,122 : DECISION ON PETITION
Filed: 10 September, 2001 :
Attorney Docket No. TRM TR990014/TR000049 :

This is a decision on the petition under 37 C.F.R. §1.47(a),[1] filed on 23 April, 2002.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted (with fee) within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)" and may include an oath or declaration executed by the inventor.

Thereafter there will be no further reconsideration.

Failure to respond within the time set forth above will result in abandonment of the application.

The Notice of Address Change hereby is acknowledged and accepted.

---

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

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

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

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

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

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

BACKGROUND

The record indicates:

- the application was filed on 10 September, 2001, without an executed oath or declaration;
- accordingly, a Notice to File Missing Parts of Application was mailed on 16 October, 2001, requiring an executed oath or declaration, and a surcharge for the late filing, all due (absent extension of time) on or before 16 December, 2001;
- Counsel filed on 23 April (over a 16 April certificate of mailing), 2002, the surcharge and a request and fee for a four- (4-) month extension of time, and the instant petition (with fee) to prosecute the application with/and the oath or declaration signed only by the first-named inventor Donald H. Warner (Mr. Warner) on behalf of non-signing second-and third-named inventors Michael N. Ruppert (Mr. Ruppert) and Robert L. Morse (Mr. Morse);
- the petition recited that the non-signing inventors Messrs. Ruppert and Morse would not communicate with Petitioner, but failed to recite and evidence that they had been presented (or that attempts had been made to present them) with the complete application, yet they refused to sign or cannot be found or reached after diligent effort.[2]

ANALYSIS

Petitioner has failed to establish that the inventor has been presented with the full application and has refused to sign the declaration (the proof of the pertinent events must be made by a statement of someone with first hand knowledge of the events with support of the registered practitioner prosecuting this matter) or cannot be reached.

A copy of the entire application must be sent to the last known address of the non-signing inventor with a request that he/she sign the declaration for the patent application. A forwarding address should be requested, if the papers are returned, and other attempts to locate the inventor, e.g. through e-mail or the telephone continue to fail, then applicant will have established that the inventor cannot be reached.

Alternatively, an oath or declaration for the patent application in compliance with 37 C.F.R. §§1.63 and 1.64 must be presented. The declaration must set forth the inventor's residence,

---

[2] The submission should include: (a) a declaration of the registered attorney(s)/agent(s) and other authority(ies) attempting the contact, outlining the efforts and the results; and (b) documentation (such as a copy of the transmittal letter(s) and delivery disposition document(s) supporting that (those) declaration(s).

citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.[3]

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

[3] See: MPEP 409.03(b).

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JJGJR.: 10-03

Paper No: 17

STEVEN J. GROSSMAN
GROSSMAN, TUCKER,
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795 ELM STREET/STE. 604
MANCHESTER NH 03101

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of
Warner, et al.
Application No. 09/950,122
Filed: 10 September, 2001
Attorney Docket No. TRM TR990014/TR000049

ON PETITION

This is a decision on the petition filed herein on 30 October, 2003, under 37 C.F.R. §1.137(b) to revive the above-identified application as abandoned due to unintentional delay, and in light of the allegations (timely reply) is considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition to withdraw the holding of abandonment under 37 C.F.R. §1.181 is **GRANTED** and fees are waived, and the petition to revive under 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record indicates that:

- it appeared that Petitioner failed to reply timely and properly to the Decision on Petition mailed on 13 August, 2002, and due (absent an extension of time) on or before Monday, 14 October, 2002;

- the application was deemed abandoned after midnight 14 October, 2002;

- it appears that Petitioner in fact responded to with a reply and a request (and fee) for extension of time on 18 March, 2003, over a 13 March, 2003, certificate of mailing;

- nonetheless, Notice of Abandonment was mailed on 22 September, 2003;

- the petition under 37 C.F.R. §1.137(b) was filed on 30 October, 2003, and Petitioner Steven J. Grossman (Reg. No. 35,001) refers to the record, a review of which adequately reflects timely reply to the 13 August, 2002, decision.

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.

---

[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.

(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 the Request to Withdraw
the Holding of Abandonment and
the Petition Alleging Unintentional Delay

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner contends and evidences that he replied timely and properly to the 13 August, 2002, decision, and that the Office indeed received that reply, and, so, satisfies the requirements for having the holding of abandonment withdrawn.

As noted above, Petitioner filed a reply in the form of the signed oath/declaration and renewed petition.

CONCLUSION

Accordingly, Petitioner satisfied the burdens set forth in Delgar v. Schulyer, and the petition under 37 C.F.R. §1.181 hereby is **granted** and the 22 September, 2003, Notice of Abandonment is **vacated**. All fees are waived.

Further, the petition under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The instant application is forwarded to OIPE for further processing (consistent with the contemporaneous decision as to joinder of the inventors) 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

---

[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.

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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JJGJR.: 10-03

Paper No: 18

STEVEN J. GROSSMAN
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795 ELM STREET/STE. 604
MANCHESTER NH 03101

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OCT 3 1 2003

OFFICE OF PETITIONS

In re Application of
Warner, et al. :
Application No. 09/950,122 : ON PETITION
Filed: 10 September, 2001 :
Attorney Docket No. TRM TR990014/TR000049 :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 18 March, 2003, but not matched with the file until this writing.

The Office regrets the delay in addressing this matter.

The petition is **DISMISSED as moot for joinder**.

Papers (including request and fees for extension of time) filed in response to the 13 August, 2002, dismissal refusing status under 37 C.F.R. §1.47(a) (Rule 1.47(a)) included a Declaration signed by the previously signing inventor Donald H. Warner **and** the two previously non-signing inventors Michael N. Ruppert and Robert L. Morse, in compliance with 37 C.F.R. §1.63.

In view of the joinder of the inventors, further consideration under Rule 1.47(a) is not necessary and the petition is considered to be moot. 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 Rule 1.47(a).

The instant file is being returned to OIPE for processing consistent with this decision 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

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COOPER & DUNHAM LLP
1185 Avenue of the Americas
New York NY 10036

MAILED

MAY 19 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In Re Application:
ASAMI, AKIKO
Appl No. 09/950,138 : WITHDRAW FROM ISSUE
Filed: September 10, 2001 : FEE PAID
Title: **INFORMATION PROVIDING SYSTEM, INFORMATION PROVIDING APPARATUS AND INFORMATION PROVIDING METHOD AS WELL AS DATA RECORDING MEDIUM**

The above-identified application is withdrawn from issue after payment of the issue fee due to the examiner inadvertently putting the wrong serial number on the Notice of Allowability. Our tech support re-docketed the case to him and allowed it, however, the case belongs to an examiner in AU 2174.

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 Andrew Faile, 571-272-7375.

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
Acting Director TC 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DATE: March 21, 2005

TO: Director, Office of Publication
South Tower

FROM: Leo Boudreau
SPE, Art Unit 2616

SUBJECT: WITHDRAWAL FROM ISSUE

Applicant: ASAMI, AKIKO
Serial No.: 09/950,138
Filed: September 10, 2001
For: **INFORMATION PROVIDING SYSTEM, INFORMATION PROVIDING APPARATUS AND INFORMATION PROVIDING METHOD AS WELL AS DATA RECORDING MEDIUM**
Notice of Allowance Mailed: November 4, 2004
Issue Fee Paid Date: January 1, 2005

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 2610.

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 2610.

Leo Boudreau for

Reinhard Eisenzopf
Acting Director, Technology Center 2600
Communications

United States Patent and Trademark Office

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 7

MICHAEL J. BLANKSTEIN
WMS GAMING INC.
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WAUKEGAN, IL 60085

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DEC 0 3 2002

OFFICE OF PETITIONS

In re Application of
John J. Giobbi
Application No. 09/950,139
Filed: September 10, 2001
Attorney Docket No. 47079-0107

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 19, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **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;[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 CFR 1.78(a)(2)(ii) and the date the claim was

[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).

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 September 10, 2001, and was pending at the time of filing of the instant petition. Further, the instant nonprovisional application was copending with prior-filed nonprovisional Application No. 09/534,406, filed March 22, 2000, for which a claim for benefit of priority is now being sought. A reference to the prior-filed application has been included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(3).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed application 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 application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted as of the date of filing the petition.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application and the revised projected publication date of March 6, 2003, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 3714 for processing the amendment filed November 19, 2002 and for processing and consideration by the examiner of the claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(3) for the benefit of priority to the prior-filed application, Application No. 09/534,406, filed March 22, 2000.

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

ATTACHMENT: Corrected Filing Receipt

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Paper No. 16

DORSEY & WHITNEY LLP
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50 SOUTH SIXTH STREET
MINNEAPOLIS MN 55402-1498

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JUN 1 0 2003

OFFICE OF PETITIONS

In re Application of
Daniel P. Woodruff et al
Application No. 09/950,159
Filed: September 10, 2001
Attorney Docket No. 6661.01

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed by facsimile transmission on June 2, 2003, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed concurrently with the instant petition.

The petition is **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;[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 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.

---

[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).

The instant pending application was filed on September 10, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title, as 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 application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed nonprovisional application 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 application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1773 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to prior-filed nonprovisional Application No. 09/487,124, filed January 19, 2000.

Karen Creasy for

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

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OCT 23 2002

OFFICE OF PETITIONS

In re Application of
Daniel P. Woodruff et al
Application No. 09/950,159
Filed: September 10, 2001
Attorney Docket No. 6661.01

ON PETITION

This is a decision on the petition, filed October 8, 2002, which is being treated 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 nonprovisional Application No. 09/487,124, filed January 19, 2000.

The petition is **DISMISSED**.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;[1]

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

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

---

[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).

The instant pending application was filed on September 10, 2001 and was copending with the above-noted, prior-filed nonprovisional application, at the time of filing, for which priority is claimed. A reference to the above-noted, prior-filed nonprovisional application has been included in an amendment to the first sentence of the specification following the title which was filed concurrently with the instant petition under 37 CFR 1.78(a)(3).

The reference to the above-noted, prior-filed nonprovisional application was not included in the manner specified in 37 CFR 1.78(a)(2) (i.e., in an ADS or in an amendment to the first sentence following the title of the specification) or filed within the period specified in 37 CFR 1.78(a)(2).

A reference to add the above-noted, prior-filed application on page one following the first sentence of the specification has been included in an amendment filed on October 8, 2002. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior 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 appli-cations, 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.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment deleting the incorporation by reference statement is required.

In order to expedite consideration, petitioner may wish to submit the substitute amendment by facsimile transmission to the number indicated below and to the attention of Karen Creasy .

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

By mail:
U.S. Patent and Trademark Office
P.O. Box 2327
Mailstop 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 Karen Creasy at (703) 305-8859.

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

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WOLF BLOCK SHORR AND SOLIS-COHEN LLP
250 PARK AVENUE, 10TH FLOOR
NEW YORK, NY 10177

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DEC 0 8 2005

OFFICE OF PETITIONS

In re Application of	:	
Mehmet C. Oz et al	:	
Application No. 09/950,163	:	DECISION GRANTING PETITION
Filed: October 15, 2002	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. COL21.227936	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 21, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief under 37 CFR 41.37(a)(1), accompanied by the fee required by 37 CFR 41.20(b)(2), runs from the date of this decision.

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 8, 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 9, 2005. A Notice of Abandonment was mailed on October 18, 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 Notice of Appeal and small entity fee of $250; (2) the small entity petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of April 8, 2005 is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 3731.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 08

John S. Beulick
Armstrong Teasdale LLP
One Metropolitan Square
Suite 2600
St Louis MO 63102

DEC - 6 2004

In re Application of:	:	
RADUSEWICZ, *et al.*	:	
Application No. 09/662,932	:	DECISION ON PETITION TO
Filed: September 15, 2000	:	WITHDRAW HOLDING OF
Attorney Docket No.: 11-SW-4905	:	ABANDONMENT

This is a decision on the petition filed, via facsimile transmission, November 23, 2003, requesting withdrawal of the holding of abandonment for the above-identified application.

The petition is **granted**.

The application was held abandoned for failure to respond to the Office action mailed May 01, 2003. A Notice of Abandonment was mailed November 05, 2003.

Petitioner asserts that on November 03, 2003, a response, including a three-month extension of time request, was timely filed. To support this assertion, petitioner has submitted a copy of the response and a copy of an itemized postcard date stamped by the United States Patent and Trademark Office (PTO) on November 03, 2003.

A review of the application file record reveals that the above-identified response was not associated with the application file at the time the Notice of Abandonment was mailed, but has since been located and matched therewith.

For the above stated reason, 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 examiner for appropriate action.

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

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

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,939,227	2005-09-06	09/950,232	2001-09-10	98-028-C1

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
◉	3 ½ year	(1551)	○	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Michael Downs 50252/	Date (YYYY-MM-DD)	2009-10-14
Name	Michael D. Downs	Registration Number	50252

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6939227
Issue Date: September 6,2005
Application No. 09950232
Filed: September 10,2001
Attorney Docket No. 98-028-C1

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

This is a decision on the electronic petition, filed October 14,2009 ,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 October 14,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

NASA Management Office-JPL
4800 Oak Grove Drive
M/S 180-801
Pasadena, CA 91109-8099

MAILED

JAN 29 2003

OFFICE OF DIRECTOR
GROUP

In re Application of
Feng Zhao
Application No.: 09/950,327
Filing Date: September 6, 2001
Attorney's Docket No.: NPO-21221-1-CU

DECISION ON PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on January 27, 2003, via facsimile transmission, to restart the period for response due to late receipt of the Office action mailed on November 25, 2002. No petition fee is required.

The petition is **GRANTED.**

Petitioner asserts that the Office action mailed November 25, 2002 was not received at the correspondence address until January 24, 2002. Petitioner further asserts that the Office action was apparently mistakenly delivered to the wrong address by the U.S. Postal Service and then forwarded by the law firm at the "wrong address" to the petitioner at the correct correspondence address. In support of these assertions, petitioner provided a copy of a letter from the law firm who forwarded the Office action to the petitioner and a copy of the cover sheet of the Office action.

The date of receipt stamped on the cover sheet of the Office action indicates that the Office action was received by the law firm at the "wrong address" on December 2, 2002. The copy of the letter from the law firm is dated January 21, 2003. The date of receipt stamped on the letter indicates that the letter and the accompanying Office action were received by the petitioner at the correspondence address on January 24, 2003.

A grantable petition to restart the previously set period for reply, pursuant to M.P.E.P. § 710.06, should meet the following criteria:

(A) the petition is filed within 2 weeks of the date of receipt of the Office action at the correspondence address;
(B) a substantial portion of the set reply period had elapsed on the date of receipt (e.g., at least 1 month of a 2- or 3-month reply period had elapsed); and

(C) the petition includes (1) evidence showing the date of receipt of the Office action at the correspondence address (e.g., a copy of the Office action having the date of receipt of the Office action at the correspondence address stamped thereon, a copy of the envelope (which contained the Office action) having the date of receipt of the Office action at the correspondence address stamped thereon, etc.), and (2) a statement setting forth the date of receipt of the Office action at the correspondence address and explaining how the evidence being presented establishes the date of receipt of the Office action at the correspondence address.

The petition satisfies the above criteria. Accordingly, the petition is granted, and the period for response is hereby reset to run three (3) months from January 24, 2003, the date of receipt of the Office action, and expires on April 24, 2003.

The application file is being forwarded to central files for Technology Center 2800 to await a response to the outstanding Office action.

Inquiries regarding this decision should be directed to Edward Westin at (703) 308-4823.

Edward Westin

Edward P. Westin, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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P.O. BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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JUN 23 2008

In re Application of :
Brett Green :
Application No. 09/950,253 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 10013479-1 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed March 3, 2008, to revive the above-identified application.

The petition is **GRANTED.**

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810 and the submission required by 37 CFR 1.114; (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

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

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

This application is being referred to Technology Center AU 2151 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Irvin Dingle
Petition Examiner
Office of Petitions

cc: David R. Risley
Thomas, Kayden, Horstemeyer & Risley LLP
Suite 1500
Atlanta, GA 30339

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FEB 08 2007

OFFICE OF PETITIONS

In re Application of	:	
Parker et al.	:	
Application No. 09/950,306	:	DECISION ON PETITION
Filed: September 10, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10899/011001	:	

This is a decision on the PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(a)(3), filed April 5, 2004, which is treated as a petition to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a "prior-filed" international application designating the United States of America (Application No. PCT/GB00/00863, filed March 9, 2000), which claims priority to a foreign application. This petition was recently forwarded to the undersigned for consideration.

The petition is **DISMISSED**.

The petition seeks acceptance of a late claim for priority to a PCT national stage application. More specifically, the amendment filed with the petition seeks to amend the application to state that:

> This application is the National Stage of International Application No.: PCT/GB00/00863, filed on March 9, 2000, which claims priority to United Kingdom Patent Application No: 9905382.9, filed on March 10, 1999.

This is not a proper reference. A review of the record reveals that this application is a U.S. national application for patent filed in the Office under 35 U.S.C. 111(a) and not an

application which entered the national stage from an international application after compliance with 35 U.S.C. 371.

With respect to any claim for foreign priority, petitioner is reminded that the relevant requirements set forth in 35 U.S.C. 119(a)-(d) and (f) and 37 CFR 1.55 must be met. It is noted that the petition indicates that the foreign applications were filed more than twelve months before the filing of this application in the United States.

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 inquiries concerning this decision may be directed to the undersigned at (571) 272-3219.

This application is being returned to Technology Center Art Unit 1771 for consideration by the examiner, in light of this decision (i.e., stating that this application is not a national stage entry), of the amendment filed April 5, 2004 (made timely by the accompanying filing of a three-month extension of time and extension fee).

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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OCT 0 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Parker et al.	:	
Application No. 09/950,306	:	DECISION ON PETITION
Filed: September 10, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.	:	
10899/011001	:	

This is a decision on the PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(a)(3), filed June 19, 2007, which is treated as a petition to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a "prior-filed" international application designating the United States of America (Application No. PCT/GB00/00863, filed March 9, 2000), which claims priority to a foreign application.

The petition is **DISMISSED**.

This is a decision on the PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(a)(3), filed April 5, 2004, which is treated as a petition to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a "prior-filed" international application designating the United States of America (Application No. PCT/GB00/00863, filed March 9, 2000), which claims priority to a foreign application. By decision mailed February 8, 2007, the initial petition was dismissed as the reference submitted improperly identified this 111(a) application as a national stage entry of an International Application[1]. It was further noted that with respect to any

[1] The reference submitted read: This application is the National Stage of International Application No.: PCT/GB00/00863, filed on March 9, 2000, which

claim for foreign priority, petitioner is reminded that the relevant requirements set forth in 35 U.S.C. 119(a)-(d) and (f) and 37 CFR 1.55 must be met.

On instant renewed petition, The petition stated that the response included an amendment. However, no amendment was among the papers received in the Office on June 19, 2007. A courtesy telephone call and message were made requesting resubmission of the amendment. However, to date, no amendment has been received. Accordingly, this decision dismissing the petition is being issued.

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 inquiries concerning this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

---

claims priority to United Kingdom Patent Application No: 9905382.9, filed on March 10, 1999.

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JUN 24 2008

OFFICE OF PETITIONS

In re Application of	:	
Parker et al.	:	
Application No. 09/950,306	:	DECISION ON PETITION
Filed: September 10, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No.	:	
10899/011001	:	

This is a decision on the PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(A)(3), filed March 21, 2008, which is treated as a renewed petition to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of a "prior-filed" international application designating the United States of America (Application No. PCT/GB00/00863, filed March 9, 2000), which claims priority to a foreign application[1].

The petition is **GRANTED**.

By decision mailed February 8, 2007, the initial PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(a)(3), filed April 5, 2004, was dismissed as the reference submitted improperly identified this 111(a) application as a national stage entry of an International Application[2]. By decision mailed October 1, 2007, a renewed PETITION TO CORRECT PRIORITY UNDER 37 CFR 1.78(a)(3), filed June 19, 2007 was dismissed. The petition did not

[1] The application as filed included this claim for foreign priority benefits in the declaration. Such foreign priority claims are permitted to be presented in the declaration. This claim was recognized by the Office as shown on the filing receipt and on the application as published.

[2] The reference submitted read: This application is the National Stage of International Application No.: PCT/GB00/00863, filed on March 9, 2000, which claims priority to United Kingdom Patent Application No: 9905382.9, filed on March 10, 1999.

include, as stated by applicants, the amendment to the specification to include the proper reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application.

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

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) The surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

37 CFR 1.78(a)(3) is applicable to this application, which was filed on September 10, 2001. Applicants have now met the requirements of 37 CFR 1.78(a)(3). The surcharge set forth in § 1.17(t) was previously charged to petitioner's Deposit Account. (The surcharge of $1,410 submitted on renewed petition is being refunded to the Deposit Account, as authorized). On instant renewed petition, applicants filed an amendment to the specification. This amendment complies with this rule.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed application. In order for the application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the

claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

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

This application is being forwarded to the examiner of Technology Center Art Unit 1794 for consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3219.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/950,306	09/10/2001	1794	710	10899/011001	13	2

CONFIRMATION NO. 1765

CORRECTED FILING RECEIPT

26161
FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

Date Mailed: 06/23/2008

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

Applicant(s)

Gareth Parker, Warwickshire, UNITED KINGDOM;
Brian Arnold, Leicester, UNITED KINGDOM;

Power of Attorney:
Owen Meegan--19643
Barry Josephs--27140
Laurie Lawrence--46593

Domestic Priority data as claimed by applicant

This application is a CON of PCT/GB00/00863 03/09/2000

Foreign Applications
UNITED KINGDOM 99005382 03/10/1999

If Required, Foreign Filing License Granted: 10/10/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/950,306**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Laminar materials suitable for use in the manufacture of shoes, method of making same and shoe stiffener materials including said laminar materials

Preliminary Class

442

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

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

NOT GRANTED

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

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ABBOTT LABORATORIES
100 ABBOTT PARK ROAD
DEPT. 377/AP6A
ABBOTT PARK, IL 60064-6008

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APR 15 2004

OFFICE OF PETITIONS

In re Application of :
Karl W. Mollison, et al. :
Application No. 09/950,307 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 6195.US.P1 :

This is a decision on the petition under 37 CFR 1.137(b), filed February 16, 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 June 19, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned at midnight on September 19, 2003.

The application file is being forwarded to Technology Center 1600, Art Unit 1615 for further processing.

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

Retta Williams

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:
09/950,329

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DR
SUITE 226
SAN JOSE CA 95110

COPY MAILED

AUG 15 2006

OFFICE OF PETITIONS

In re Application of	:	
Kadlec, et al.	:	
Application No. 09/950,329	:	DECISION ON PETITION
Filed: September 10, 2001	:	
Attorney Docket No. M-11095 US	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed July 20, 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 July 5, 2005. This Notice set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on October 6, 2005. A Notice of Abandonment was mailed on May 9, 2006.

Petitioner argues that the Notice of Allowance was mailed to the incorrect address. In support thereof, petitioner has supplied a copy of a Change of Correspondence Address, together with a USPTO date stamped postcard receipt showing that the Change of Correspondence Address was filed on March 1, 2004.

In view thereof, **the holding of abandonment is withdrawn.**

The matter is being forwarded to Group Art Unit 2627 for re-mailing of the Notice of Allowance, setting a new period for reply.

Telephone inquiries regarding 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
Washington, D.C. 20231
www.uspto.gov

Paper No. 6

THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION
PO BOX 1967
MIDLAND MI 48641-1967

COPY MAILED

JUN 2 8 2002

OFFICE OF PETITIONS

In re Application of :
Falla, et al. :
Application No. 09/950,345 : DECISION ACCORDING STATUS
Filed: September 10, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 60665A :
Title: GAS PERMEATION RESISTANT :
SYNTHETIC CORK CLOSURE :

This is in response to the petition under 37 CFR 1.47, filed March 4, 2002 (Certificate of Mailing dated February 22, 2002), which is being treated as a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **GRANTED**.

The above-identified application was filed on September 10, 2001. On October 11, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration (and a surcharge for its late filing). This Notice set a two-month period for reply.

In reply, applicant filed the instant petition, and paid the surcharge for late filing of the declaration. To make timely this reply, applicant obtained a three month extension of time.

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.

Accompanying the petition were, *inter alia*,: (1) a declaration executed by co-inventors Daniel J. Falls, Michael L. Mounts, and Deborah E. Plaver, with the signature block for co-inventor Stuart J. Yaniger left blank; (2) a copy of a cover letter to Yaniger, transmitting the application papers, and (3) declarations from Nemia C. Damocles and Bethany Wagner, detailing the transmittal of the application papers, communications with Yaniger, and attesting that as of the filing of the instant

petition, no executed declaration from Yaniger has been received.

While petitioner did not include a statement of Yaniger's last known address in the petition, the last known address of Yaniger is assumed to be that stated in the declaration.

The declaration filed March 4, 2002 and the petition have been reviewed and found to be in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As authorized, Deposit Account No. 01-1512 has been charged the $920 fee for the three month extension of time, the $130 petition fee, and the $130 surcharge for late filing of the declaration.

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 returned to the Office of Initial Patent Examination for continuation 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
Washington, D.C. [illegible]

STUART YANIGER
484 JASPER CT
BENICIA CA 94510

COPY MAILED

JUN 2 8 2002

OFFICE OF PETITIONS

In re Application of :
Falla, et al. :
Application No. 09/950,345 :
Filed: September 10, 2001 : LETTER
Title: INTERACTIVE WIRELESS DEVICE :
COMMUNICATION SYSTEM FOR MEETINGS AND
CONFERENCES

Dear Mr. Yaniger:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 USC 116 and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, agent of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Cliff Congo at (703) 305-0272. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

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

Nemia C. Damocles
The Dow Chemical Company
Intellectual Property Section
PO Box 1967
Midland Mi 48641-1967

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

LANCE J. LIEBERMAN, ESQ.
COHEN, PONTANI, LIEBERMAN & PAVANE
551 FIFTH AVENUE
SUITE 1210
NEW YORK NY 10176

COPY MAILED

AUG 2 9 2002

OFFICE OF PETITIONS

In re Application of:
Vatanen
Application No. 09/950,347
Filed: September 10, 2001
Attorney Docket No. 2132-54PCON
For: SYSTEM AND METHOD FOR IMPLEMENTING SECURE MOBILE-BASED TRANSACTIONS IN A TELECOMMUNICATION SYSTEM

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed May 13, 2002 and supplemented on May 21, 2002.

The petition is granted.

Petitioner has shown that the non-signing inventor, Harri Vatanen, has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Ms. Johanna Heikkinen establishes that the inventor was mailed the application papers, including the specification, claims and drawings, but the inventor failed to respond to the request that he sign the declaration. In addition, petitioner has shown that Sonera Smarttrust Ojy has a proprietary interest in the above-identified application with an assignment document and an employment agreement. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63 and 1.64 and petitioner has shown that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(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.

After this decision is mailed, the above-identified application will be forwarded to the Office of Initial Patent Examination for issuance of a corrected filing receipt.

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

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HARRI VATANEN
SAVANNAH LINDALE CLOSE
WENTWORTH ESTATES
VIRGINIA WATERS
SURREY, UNITED KINGDOM

COPY MAILED

AUG 2 9 2002

OFFICE OF PETITIONS

In re Application of:
Vatanen
Application No. 09/950,347
Filed: September 10, 2001
Attorney Docket No. 2132-54PCON
For: SYSTEM AND METHOD FOR IMPLEMENTING SECURE MOBILE-BASED TRANSACTIONS IN A TELECOMMUNICATION SYSTEM

LETTER

Dear Mr. Vatanen:

You are named as the sole 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(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 the named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Requests for information regarding your application should be directed to the File Information Unit at (703)308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703)308-9726 or 1(800)972-6382 (outside the Washington D.C. area).

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

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

ATTORNEY OF RECORD: LANCE J. LIEBERMAN, ESQ.
COHEN, PONTANI, LIEBERMAN & PAVANE
551 FIFTH AVENUE
SUITE 1210
NEW YORK NY 10176

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,360

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 3 0 2003

Technology Center 2600

In re Application Serial No.:

09/950,360

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,361

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 9 2003

Technology Center 2600

In re Application Serial No.:

09/950,361

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 7

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application of :
Kadlec et al. :
Application No. 09/950,365 : DECISION ON REQUEST TO
Filed: September 10, 2001 : WITHDRAW AS ATTORNEY
For: **OPTICAL DISK DRIVE WITH A DIGITAL FOCUS AND TRACKING SERVO SYSTEM** :

This is a decision on the request to withdraw as attorney/agent of record filed on October 31, 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 of Customer Nos. 24251 and 27869 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: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

DEC 2 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,372

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAILED
MAR 0 4 2003
Technology Center 2600

In re Application Serial No.:
09/950,376

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Kenneth A. Wieder for

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAIL

MAY 23 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MacPherson Kwok Chen &Heid LLP
1762 Technology Drive, Suite 226
San Jose, CA 95110

In re Application of
Ron J. Kadlec, et al.
Application No. 09/950,376
Filed: September 10, 2001
For: **DIGITAL FOCUS AND TRACKING SERVO SYSTEM WITH ONE-TRACK JUMP**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Petition to Withdraw Holding of Abandonment filed May 18, 2005, pursuant to 37 C.F.R. §1.181. No fee is required.

This application is held abandoned for failure to timely file a response to the non-final Office action mailed August 11, 2004. A Notice of Abandonment was mailed May 16, 2005.

Petitioner asserts that the non-final Office action was not received. Petitioner also states that a power of attorney and change of correspondence address was submitted on July 31, 2003.

The petition fails to comply with MPEP §711.03(c) for a successful petition to withdraw the holding of abandonment. Petitioner failed to supply a copy of their docket record with explanation of said record.

However, a review of the application file reveals that on July 31, 2003, a revocation and power of attorney with change of correspondence address was filed and matched with the application prior to the mailing of the non-final Office action. Thus, the non-final Office action was mailed to an incorrect address and hence, there was an obvious irregularity in the mailing of the Office communication.

Thus, the application was not abandoned in fact. Accordingly, the holding of abandonment is withdrawn.

The petition is **GRANTED**.

The application file is being forwarded to the TC 2600 technical support staff for processing the revocation of power of attorney and change of correspondence address and to re-mail the non-final Office action. The time period for response to the non-final Office action will be reset to run from the date of re-mailing.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:
09/950,377

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 9 2003

Technology Center 2600

In re Application Serial No.:

09/950,377

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/950,378

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

FEB 0 3 2003

Technology Center 2600

In re Application Serial No.:

09/950,378

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper 8

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

COPY MAILED

JUN 0 5 2003

OFFICE OF PETITIONS

In re Application of
Hideto Takeuchi et al.
Application No. 10/950,391
Filed: September 10, 2001
Attorney Docket No. 113184-052

DECISION GRANTING PETITION

This is a decision on the petition filed May 5, 2003 under 37 CFR 1.53, in response to the "Notice of Omitted Items" mailed February 27, 2003.

The instant application was filed September 10, 2001 and a filing date was accorded. However, according to the Notice of Omitted Items, the application papers submitted did not include figures 1 to 8 described in the specification.

Petitioner asserts that 8 sheets of drawings containing figures 1 to 8 were among the papers filed on September 10, 2001, and submits a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, the number of drawing sheets to be 8 and bears a United States Patent and Trademark Office date-stamp of September 10, 2001. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

In view of the foregoing, the petition is **Granted.**

Given the basis for granting the petition, no petition fee is due and therein, petitioner's deposit account no. 02-1818 will be credited in the amount of $130.00.

It should be noted that a Notice to File Missing Parts was mailed October 11, 2001. The unsigned oath or declaration was executed and returned to the USPTO on January 14, 2002 with the surcharge in the amount of $130.00. It appears that the filing date was inadvertently changed to January 14, 2002. In the interim, between the time the application was filed and the time the oath or declaration was submitted, there was in fact a fee increase as of October 1, 2001. As a result, when the Notice of Omitted Items was generated with the wrong filing date the system incorrectly noticed that additional fees for claims in excess of three were due. No such fees are due and the filing date will be corrected to September 10, 2001.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing, using the application papers received in the Office on September 10, 2001 and the eight sheets of drawings containing figures 1 to 8 submitted on petition May 5, 2003.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper 8

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JUN 0 6 2003

OFFICE OF PETITIONS

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

In re Application of
Hideto Takeuchi et al.
Application No. 09/950,391
Filed: September 10, 2001
Attorney Docket No. 113184-052

DECISION GRANTING PETITION

CORRECTED[1]

This is a decision on the petition filed May 5, 2003 under 37 CFR 1.53, in response to the "Notice of Omitted Items" mailed February 27, 2003.

The instant application was filed September 10, 2001 and a filing date was accorded. However, according to the Notice of Omitted Items, the application papers submitted did not include figures 1 to 8 described in the specification.

Petitioner asserts that 8 sheets of drawings containing figures 1 to 8 were among the papers filed on September 10, 2001, and submits a "legible" postcard receipt in evidence thereof. The postcard receipt, identifies the application and acknowledges, inter alia, the number of drawing sheets to be 8 and bears a United States Patent and Trademark Office date-stamp of September 10, 2001. Further, the postcard receipt lacks any notation of non-receipt of any item listed.

In view of the foregoing, the petition is **Granted.**

Given the basis for granting the petition, no petition fee is due and therein, petitioner's deposit account no. 02-1818 will be credited in the amount of $130.00.

It should be noted that a Notice to File Missing Parts was mailed October 11, 2001. The unsigned oath or declaration was executed and returned to the USPTO on January 14, 2002 with the surcharge in the amount of $130.00. It appears that the filing date was inadvertently changed to January 14, 2002. In the interim, between the time the application was filed and the time the oath or declaration was submitted, there was in fact a fee increase as of October 1, 2001. As a result, when the Notice of Omitted Items was generated with the wrong filing date the system incorrectly noticed that additional fees for claims in excess of three were due. No such fees are due and the filing date will be corrected to September 10, 2001.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing, using the application papers received in the Office on September 10, 2001 and the eight sheets of drawings containing figures 1 to 8 submitted on petition May 5, 2003.

Telephone inquiries regarding this decision should be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

[1]Application Serial No. on decision mailed June 5, 2003 was incorrect

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COMMISSIONER FOR PATENTS
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WASHINGTON, DC 20231
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Paper No. 8

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NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:

09/950,393

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 28 2003

Technology Center 2600

In re Application Serial No.:

09/950,393

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

SKJERVEN MORRILL LLP
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SUITE 700
SAN JOSE CA 95110

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DEC 2 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,394

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
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2560 55th Street
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560-55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 3 1 2003

Technology Center 2600

In re Application Serial No.:

09/950,394

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

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Krista Zele
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San Jose, CA 95110

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MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
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Paper No. 7

SKJERVEN MORRILL LLP
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DEC 2 6 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,395

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Krista Zele
Special Program Examiner
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cc: Steve Volk
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Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
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BOULDER, CO 80301-5706

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FEB 2 7 2003

Technology Center 2600

In re Application Serial No.:

09/950,395

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

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SKJERVEN MORRILL LLP
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SUITE 700
SAN JOSE CA 95110

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NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/950,397

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 12

MacPherson Kwok Chen & Heid LLP
1762 Technology Drive
Suite 226
San Jose, CA 95110

MAIL

OCT 0 4 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re application of: :
Ron J. Kadlec, et al. :
Application No. 09/950,397 : DECISION ON REQUEST TO
Filed: September 10, 2001 : WITHDRAW FROM RECORD
For: **DIGITAL SERVO SYSTEM WITH INVERSE NON-LINEARITY COMPENSATION** :

This is a decision on the request to withdraw as attorney/agent of record filed on December 24, 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 satisfied the requirements for successfully requesting withdrawal. Accordingly, the request is **GRANTED.**

All of the attorneys/agents of record associated with Customer Numbers 24251 and 27869 are withdrawn.

All future communications from the Office will continue to be directed to the address listed above (as requested in a Change of Address filed March 1, 2004) 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.

The file is being returned to the examiner for appropriate action.

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

cc: SKJERVEN MORRIL LLP
25 METRO DRIVE, SUITE 700
SAN JOSE, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

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NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:

09/950,398

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 11

MR. STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAIL

DEC 16 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Ron J. Kadlec, et al.
Application No. 09/950,398
Filed: September 10, 2001
For: DIGITAL FOCUS AND TRACKING SERVO SYSTEM WITH MULTI-ZONE CALIBRATION

: DECISION DISMISSING PETITION
: TO WITHDRAW HOLDING OF
: ABANDONMENT

This is a decision on the Request to Withdraw from Representation filed December 24, 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.

As a result of a petition decision mailed November 21, 2002, the attorneys requesting withdrawal are no longer of record. Acccordingly, the request is DISMISSED AS MOOT. A courtesy copy of this decision is being supplied to the attorneys requesting withdrawal at the below-listed address.

All future communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant. Applicant is reminded of their 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 Programs Examiner
Technology Center 2600
Communications
(703) 305-4701

cc: SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAILED

MAR 0 3 2003

Technology Center 2600

In re Application Serial No.:

09/950,409

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 11

MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DRIVE, SUITE 226
SAN JOSE CA 95110

MAIL

APR 0 9 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Kadlec :
Application No. 09/950,410 :DECISION ON REQUEST TO
Filed: September 10, 2001 :WITHDRAW AS ATTORNEY
For: **DIGITAL TRACKING SERVO SYSTEM WITH TRACKING SKATE DETECTION** :

This is a decision on the request to withdraw as attorney/agent of record filed on October 31, 2003 and December 24, 2003, (Paper No. 5 ½ and Paper No. 6, respectively).

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.

Both Requests to Withdraw as Attorney are **DISMISSED AS MOOT**.

Attorneys requesting withdraw are not of record due to a Revocation of Power of Attorney executed by the assignee on April 8, 2004 (certificate of mailing, dated August 5, 2003).

Further communications will be directed to the address listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc : SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 7

MAIL

NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:

09/950,411

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,411

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

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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MACPHERSON KWOK CHEN & HEID
1762 TECHNOLOGY DRIVE
SUITE 226
SAN JOSE, CA 95110

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MAY 0 6 2005

OFFICE OF PETITIONS

In re Application of :
Ron J. Kadlec et al :
Application No. 09/950,411 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. M-12107 US :

This is a decision on the petition under 37 CFR 1.173(b), filed January 14, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 2, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 3, 2003.

Pursuant to petitioner's authorization, Deposit Account No. 50-2257 was charged $750.00 for the petition to revive an unintentionally abandoned application.

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

This matter is being referred to Technology Center AU 2655.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,413

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

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25 Metro Drive
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San Jose, CA 95110

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MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, DC 20231
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Paper No. 8

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

DEC 2 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,413

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/950,432

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Krista Zele
Special Program Examiner
Technology Center 2600
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Chairman of the Board
DataPlay, Inc.
2560 55th Street
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 9 2003

Technology Center 2600

In re Application Serial No.:

09/950,432

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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MacPherson Kwok Chen & Heid LLP
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UNITED STATES PATENT AND TRADEMARK OFFICE

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#10

ALZA CORPORATION
1900 CHARLESTON ROAD
M10-3
P. O. BOX 7210
MOUNTAIN VIEW, CA 94039-7210

In re Application of	:
Michael J. N. Cormier et al	:
Serial No.: 09/950,436	: PETITION DECISION
Filed: September 8, 2001	:
Attorney Docket No.: ARC 2911	:

This is in response to the petition under 37 CFR 1.181, filed November 8, 2004, requesting withdrawal of abandonment based on timely filing of a reply.

A review of the file history shows that the examiner mailed an Office action to applicants on January 13, 2003, setting a three month shortened statutory period for reply. Upon failure to receive a reply the application was held abandoned by Notice of Abandonment mailed October 3, 2003. Applicants state that a reply was submitted on Monday, July 14, 2003, which included a request and fee for a three month extension of time. The reply, bearing an Office received date of July 17, 2003, and a proper Certificate of Mailing dated July 14, 2003, has been located in the file. In view of applicants' timely reply the Notice of Abandonment is withdrawn and the application restored to pending status with the mailing of this decision.

The petition is **GRANTED**.

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

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

Bruce M. Kisliuk
Director, Technology Center 1600

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Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAILED

FEB 1 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,444

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 7-18-07

Paper No.: _____

TO SPE OF : **Technology Center** 1617

09/950490

SUBJECT : Request for Certificate of Correction on Patent No.: 7122578 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.

Elisha Evans

Thank You For Your Assistance

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:

The patentable compound is keto-isovaleric acid. "alpha-keto-isovaleric acid" is the complete name of keto-isovaleric acid.

_____ **SPE**

_____ **Art Unit**

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JUN 10 2004

#6

Michael L. Goldman
NIXON PEABODY LLP
Clinton Square
P.O. Box 31051
Rochester NY 14603

In re application of Barry G. Hall et al. :
Serial No. : 09/950,492 : WITHDRAWAL OF
Filed : September 11, 2001 : ABANDONMENT
Attorney Docket No.: 176/60871 (1-11027-970) :

This is in response to applicants' petition under 37 CFR 1.181, filed January 14, 2004, requesting withdrawal of the holding of abandonment based on the timely filing of an executed declaration and a check for $65.00 in response to the Notice to File Missing Parts mailed October 25, 2001.

A review of the file history shows that the Initial Patent Examination Division mailed a Notice to File Missing Parts to applicants on October 25, 2001, setting a two month time period for reply. The Notice required applicants to file a signed oath or declaration and a $65.00 payment for the late oath or declaration surcharge. On December 17, 2003 the Office mailed a Notice of Abandonment, which indicated that no response had been received to the Notice to File Missing Parts mailed October 25, 2001.

Applicants state that a signed declaration and a check for $65.00 were filed on December 11, 2001, as evidenced by the properly executed Certificate of Mailing on the reply. Applicants provide a copy of the submitted reply with the petition, and also a copy of the date stamped return post card. Review of USPTO records indicates that the $65.00 surcharge was processed. In view of this evidence, applicants are considered to have submitted a timely reply.

Applicants' petition is **GRANTED**. The application is restored to pending status with the mailing of this decision and will be forwarded to the Initial Patent Examination Division for completion of pre-examination processing.

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 (571) 272-0974 or by facsimile transmission at (571) 273-0974.

Jasemine C. Chambers

Jasemine Chambers
Director, Technology Center 1600

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

Michael L. Goldman
NIXON PEABODY LLP
Clinton Square
P.O. Box 31051
Rochester NY 14603

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SEP 2 0 2006

OFFICE OF PETITIONS

In re Application of	:	
Hall et al.	:	DECISION ON APPLICATION
Application No. 09/950,492	:	FOR
Filed: September 11, 2001	:	PATENT TERM ADJUSTMENT
Atty. Dkt. No. 176/60871 (1-11027-970)	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(b)," filed May 25, 2006, requesting that the Office reconsider the determination of Patent Term Adjustment (PTA) that accompanied the Notice of Allowance. Applicants request that the initial determination of patent term adjustment be corrected from zero (0) days to one thousand twenty-four (1024) days.

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

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is five hundred ninety-nine (599) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

RELEVANT STATUTES AND REGULATIONS

37 CFR § 1.702 provides that:

(a) Failure to take certain actions within specified time frames. Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the

issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application;

§ 1.703 provides, in pertinent part, that:

(a) The period of adjustment under § 1.702(a) is the sum of the following periods:

(1) The number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

37 CFR § 1.704(b) provides that:

> With respect to the grounds for adjustment set forth in §§ 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is set in the Office action or notice has no effect on the three-month period set forth in this paragraph.

37 CFR § 1.704(c)(8) provides that:

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

37 CFR 1.704(d) provides that:

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

OPINION

Applicants' arguments and evidence have been considered, in light of the application history, and it has been determined that the period of adjustment of 653 days pursuant to § 1.702(a)(1) is correct; the period of reduction of 719 days pursuant to § 1.704(b) is incorrect; and the period of reduction of 14 days pursuant to § 1.704(c)(8) is correct.

As to the period of adjustment pursuant to § 1.702(a)(1), applicants are incorrect that the delay is calculated as 1078 days, counting the numbers of days from the filing date of the application, September 11, 2001, to the mailing of a first Office action on August 25, 2004. The period of adjustment pursuant to this section is based on the Office mailing a first Office action later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international

application. In this instance, the period is properly calculated as 653 days, counting the number of days in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a), November 12, 2002, and ending on the date of mailing of an action under 35 U.S.C. 132, August 25, 2004. Accordingly, the adjustment of 653 days is proper.

As to the period of reduction pursuant to § 1.704(b), a review of the application history reveals that no response to the Notice to File Missing Parts of Application mailed October 25, 2001 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed December 17, 2003. In response, on January 14, 2004, applicants filed a petition to withdraw the holding of abandonment along with copies of the responses as originally filed. It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed June 10, 2004, the petition was granted on the basis that applicants had shown that a proper response was filed on January 8, 2002.

Accordingly, applicants' response to the Notice to File Missing Parts of Nonprovisional Application mailed October 25, 2001 should be considered received in the Office within the three-month period provided for in § 1.704(b). Further, as stated in the rule, the period for reply, in this instance a two-month time period, that is set in the Office action or notice has no effect on the three-month period. As such, applicants are incorrect that a period of adjustment of 14 days should have been entered for applicants' taking 2 months and 14 days to respond to the Notice. Accordingly, the reduction of 719 days for applicant delay in responding to the Notice to File Missing Parts is corrected to zero days.

As to the period of reduction pursuant to § 1.704(c)(8), applicants are incorrect that the Office improperly attributed a 14 day delay for the Information Disclosure Statement (IDS) that was entered on October 31, 2005. Applicants do not dispute filing an IDS on that date. Rather, applicants argue that no reduction is warranted because the IDS was timely submitted and the submission of the IDS was not required for response to the final Office action dated July 13, 2005, which applicants timely responded to (amendment entered October 17, 2005). Applicants are advised that pursuant to 1.704(c)(8) the basis of the reduction is that applicants filed an IDS on October 31, 2005

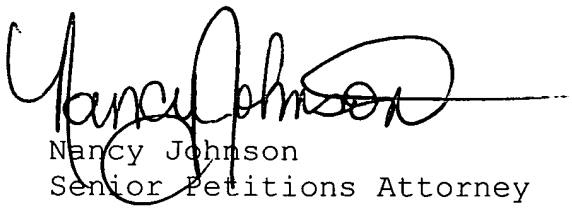
after the filing of an amendment on October 17, 2005. Filing of a supplemental paper not requested by the examiner is a failure to engage in reasonable efforts to conclude prosecution warranting a reduction of patent term adjustment. The examiner did not expressly request this IDS. Further, a review of the IDS confirms that it did not include a 1.704(d) statement warranting exclusion from reduction despite being a supplemental paper. Accordingly, the reduction of 14 days is proper.

CONCLUSION

In view thereof, the correct patent term adjustment at the time of mailing of the notice of allowance is five hundred ninety-nine days (599) days.

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

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



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Monday
Date: 9/18/2006

PALM INTRANET

Time: 08:01:22

PTA Calculations for Application: 09/950492			
Application Filing Date:	09/11/2001	PTO Delay (PTO):	653
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	773
Post-Issue Petitions:	0	Total PTA (days):	599
PTO Delay Adjustment:	719		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
72	09/18/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	719		
59	02/22/2006	MAIL NOTICE OF ALLOWANCE			
58	02/22/2006	MAIL EXAMINER'S AMENDMENT			
57	02/18/2006	ISSUE REVISION COMPLETED			
56	02/18/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
55	02/15/2006	EXAMINER'S AMENDMENT COMMUNICATION			
54	02/15/2006	NOTICE OF ALLOWABILITY			
53	02/14/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
52	02/10/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
51	02/07/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
50	02/07/2006	CASE DOCKETED TO EXAMINER IN GAU			
49	10/31/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
48	08/22/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	01/14/2006	DATE FORWARDED TO EXAMINER			
46	01/09/2006	AMENDMENT AFTER FINAL REJECTION			
45	11/23/2005	MAIL FINAL REJECTION (PTOL - 326)			
44	11/19/2005	FINAL REJECTION			
43	10/31/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		14	41
42	10/26/2005	DATE FORWARDED TO EXAMINER			
41	10/17/2005	AMENDMENT AFTER FINAL REJECTION		4	39
		INFORMATION DISCLOSURE STATEMENT (IDS)			

40	08/22/2005	FILED			
39	07/13/2005	MAIL FINAL REJECTION (PTOL - 326)			
38	07/11/2005	FINAL REJECTION			
37	04/26/2005	DATE FORWARDED TO EXAMINER			
36	04/07/2005	RESPONSE AFTER NON-FINAL ACTION		36	34
35	04/07/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
34	12/02/2004	MAIL NON-FINAL REJECTION			
33	11/29/2004	NON-FINAL REJECTION			
32	09/22/2004	DATE FORWARDED TO EXAMINER			
31	09/13/2004	RESPONSE TO ELECTION / RESTRICTION FILED			
30	09/13/2004	WORKFLOW INCOMING AMENDMENT IFW			
29	08/24/2004	REFERENCE CAPTURE ON IDS			
28	08/25/2004	MAIL RESTRICTION REQUIREMENT	653		-1
27	08/23/2004	REQUIREMENT FOR RESTRICTION / ELECTION			
26	05/17/2004	REFERENCE CAPTURE ON IDS			
25	08/02/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
24	01/14/2004	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
23	05/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
22	02/19/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
21	12/26/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	07/22/2004	CASE DOCKETED TO EXAMINER IN GAU			
19	06/28/2004	APPLICATION DISPATCHED FROM OIPE			
18	06/29/2004	APPLICATION IS NOW COMPLETE			
17	01/14/2004	ADDITIONAL APPLICATION FILING FEES		719	6
16	01/14/2004	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
15	06/14/2004	WITHDRAW PUBLICATION/PRE-EXAM ABANDON			
14	06/10/2004	PETITION TO REVIVE APPLICATION - GRANTED			
13	01/14/2004	PETITION ENTERED			
12	05/27/2004	CASE DOCKETED TO EXAMINER IN GAU			
11	02/28/2004	CASE DOCKETED TO EXAMINER IN GAU			

10	12/27/2001	ABANDONMENT -- DURING PREEXAM PROCESSING			
9	08/25/2002	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
8	05/16/2002	RECEIPT OF ACKNOWLEDGMENT LETTER			
7	11/09/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
6	10/25/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
5	10/24/2001	CORRESPONDENCE ADDRESS CHANGE			
4	10/12/2001	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	09/17/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	09/11/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	09/11/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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ALAN CRAWFORD
2615 W VICTORY BLVD
APT B
BURBANK CA 91505

COPY MAILED

JAN 2 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Alan Crawford	:	
Application No. 09/950,504	:	DECISION ON PETITION
Filed: September 13, 2001	:	
Title: DOOR HOLD OPEN AND CONTROLLED RELEASE MECHANISM	:	

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b), filed January 4, 2005 (Certificate of Mailing dated December 30, 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)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely pay the issue fee in response to the Notice of Allowance mailed July 29, 2004. This Notice set a statutory period for reply of three months for issue fee transmittal. No extensions of time under 37 CFR 1.136(a) were available. No issue fee having been received, the above-identified application became abandoned on October 30, 2004. A Notice of Abandonment was mailed on December 13, 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 (1), the issue fee.

Effective December 8, 2004, the issue fee for a small entity was increased from $665 to $700. Accordingly, on renewed petition petitioner must submit the $35 balance of the issue fee due.

Receipt of the $750 petition fee, $300 publication fee, and $665 submitted for the issue fee is acknowledged.

Further correspondence concerning this application 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

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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ALAN CRAWFORD
2615 W VICTORY BLVD
APT B
BURBANK CA 91505

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FEB 11 2005

OFFICE OF PETITIONS

In re Application of :
Alan Crawford :
Application No. 09/950,504 : DECISION ON PETITION
Filed: September 13, 2001 :
Title: DOOR HOLD OPEN AND :
CONTROLLED RELEASE MECHANISM

This is a decision on the "Renewed Petition Under 37 CFR 1.137(b)", filed January 31, 2005.

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 July 29, 2004. This Notice set a statutory period for reply of three months for issue fee transmittal. No extensions of time under 37 CFR 1.136(a) were available. No issue fee having been received, the above-identified application became abandoned on October 30, 2004. A Notice of Abandonment was mailed on December 13, 2004. Applicant filed a petition to revive under 37 CFR 1.137(b) on January 4, 2005. However, because applicant did not submit the issue fee in its entirety, the petition was dismissed in a decision mailed on January 31, 2005.[1]

[1] Petitioner submitted $665 for the issue fee. However, effective December 8, 2004, the issue fee was increased to $700.

With the instant petition, petitioner has submitted the balance of the issue fee such that the issue fee has now been paid in full. Petitioner previously paid the petition fee and made the proper statement of unintentional delay with his petition filed on January 4, 2005.

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

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

Cliff Congo
Petitions Attorney
Office of Petitions

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

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/950,512

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,512

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

Reinhard Eisenzopf

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 7

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DEC 27 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:
09/950,513

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,573

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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

OCT 20 2004

Paper No. 23

In re Application of :
Mingchih M. Tseng :
Application No. 09/950,517 : DECISION ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 00216-636004/7982C :

This is a decision on the petition filed on July 16, 2004, by which petitioner requests withdrawal of the holding that this application stands abandoned for failure to file a timely reply to the final Office action dated November 18, 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 in fact file a timely reply to the Office letter in question. Petitioner supports this allegation by submitting a copy of the reply, a copy of a post card receipt for the filing of the reply, showing that the reply was in fact received in the Office on November 28, 2003, a date within the period for filing a reply to Office letter in question. Therefore, it is clear that this application is not 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 entry of the reply that is attached to the petition. The date to which the reply is entitled is November 28, 2003. Thereafter, the application will be forwarded to the examiner for immediate consideration and appropriate action.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Fish & Richardson PC
225 Franklin Street
Boston, MA 02110

SPE : B. Ashley

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/25/07

TO SPE OF : ART UNIT 3724

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/950,517 Patent No.: 7069658

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

BOYER D. ASHLEY
SUPERVISORY PATENT EXAMINER

SPE 3724 Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAILED

MAR 0 4 2003

Technology Center 2600

In re Application Serial No.:
09/950,519

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Kenneth A. Wieder for

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

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

MAILED

MAR 13 2003

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Ostrolenk, Faber, Gerb & Soffen
1180 Avenue of the Americas
New York, NY 10036-8403

Paper No. 6

In re application of
Robert G. Brown
Application No. 09/950,526
Filed: September 10, 2001
For: SYSTEM AND METHOD FOR MODIFYING A BASELINE TO PREDICT SALES OF PRODUCTS

: **DECISION ON PETITION**
: **TO MAKE SPECIAL**
: **(ACCELERATED EXAMINATION)**

This is in response to the petition filed on January 21, 2003 to make the above-identified application special on the basis of special examining procedure for certain new applications - accelerated examination as set forth in MPEP § 708.02 VIII.

The requirements for granting special status under this section are: (A) a petition to make special accompanied by the fee set forth in 37 CFR 1.17(i); (B) all claims being directed to a single invention, or an election without traverse if the Office determines that all the claims are not directed to a single invention; (C) a statement that a pre-examination search was made listing the field of search; (D) one copy of each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and (E) a detailed discussion of how the claimed subject matter is patentable over the references.

Since all of the requirements for special status under MPEP § 708.02 VIII have been met, the petition is **GRANTED**.

The examiner is directed (1) to make an interference search for possible interfering applications, (2) to promptly examine this application out of turn, and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference or appeal, if any, only if petitioner makes a prompt ***bona 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**.

It is noted that the law firm and correspondence address on the petition is one other than that of record. Please clarify.

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

kjd/tpl: 2/26/03

THE SPE/EXAMINER NEEDS TO FILL OUT THE FOLLOWING PRIOR TO A DECISION BEING MADE ON THE PETITION TO MAKE SPECIAL

☒ THERE IS NO RESTRICTION/ELECTION REQUIRED IN THIS CASE

☐ THERE IS A RESTRICTION/ELECTION REQUIRED AND THE ATTORNEY HAS ELECTED WITHOUT TRAVERSE

☐ THERE IS A RESTRICTION/ELECTION REQUIRED AND THE ATTORNEY HAS REFUSED TO ELECT WITHOUT TRAVERSE (MAKE SURE ATTORNEY KNOWS THAT HIS PETITION TO MAKE SPECIAL WILL BE DENIED IF HE REFUSES TO ELECT OR IF HE ELECTS WITH TRAVERSE)

PLEASE RETURN THE CASE ASAP TO:

STEVEN MEYERS **CPK5-8T06**

(UNDER NO CIRCUMSTANCES SHOULD AN OFFICE ACTION BE ISSUED PRIOR TO THE PETITION BEING DECIDED)

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DANIEL P. MORRIS
IBM CORPORATION
INTELLECTUAL PROPERTY LAW DEPT.
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

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SEP 1 4 2004

OFFICE OF PETITIONS

In re Application of	:	
Angelopoulos et al.	:	
Application No. 09/950,534	:	ON PETITION
Filed: October 19, 2001	:	
Attorney Docket No. YO996-238US3	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed August 10, 2004, to revive the above-identified application.

The petition is **GRANTED.**

This application became abandoned for failure to timely reply to the non-final Office action mailed May 30, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on August 31, 2003.

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

This matter is now being referred to Technology Center 2800 for further examination on the merits.

Telephone inquiries should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after September 28, 2004 should be directed to the undersigned at (571) 272-3282.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 9

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAILED

FEB 1 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,541

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

#7

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

Paper No. 7

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 21 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/950,548

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Reinhard J. Eisenzopf
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4711

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#10

Paper No. 10

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

JAN 2 8 2003

Technology Center 2600

In re Application Serial No.:

09/950,548

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Nixon Peabody LLP
Clinton Square, P.O. Box 31051
Rochester, New York 14603-1051

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SEP 19 2005

OFFICE OF PETITIONS

In re Application of
Trova
Application No. 09/950,549
Filed: September 11, 2001
Attorney Docket No. 2809/1250

: DECISION GRANTING PTA
:APPLICATION

This decision is in response to applicant's "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705(b)" timely[1] filed on December 27, 2004 requesting that the Office adjust the PTA calculation at the time of the mailing of the notice of allowance from a determination of 281 to a determination of 283 days.

Applicant's application is **GRANTED.** The Office will adjust the PAIR calculation to reflect this decision.

Applicant argues that the Office improperly assessed a two delay under 35 U.S.C. 1.704(b) for responding to the notice to file missing parts more than three months after the mailing of the notice. Applicant asserts that he replied to the October 15, 2001 notice on January 8, 2005, within three months. To substantiate his claim, applicant submits a copy of the postcard stamped receipt which is prima facie evidence of response date.

Applicant's arguments are persuasive. Upon review, the date in which applicants complied in full to the October 15, 2001 notice is January 8, 2005 not January 17, 2005. Accordingly, applicants response was timely filed. Accordingly, the Office had 309 days of delay and applicant committed only 26 days of applicant delay. Accordingly, the correct determination at the time of the mailing of the notice of allowance is two and eighty three (283)days as asserted by applicant.

After the mailing of this decision, the application will be forwarded to the Office of Patent Publications for a prompt issuance of the application. Any delays in issuing the application more than four months after the payment of the issue fee and all other requirements being satisfied will be added to the amount of PTA at the time of the issuance of the application.

The Office has assessed the $200.00 application fee. No additional fees are required in rendering this decision.

---

[1]Issue fee paid on December 28, 2004.

Application No. 09/950,549

Any questions concerning this decision should be mailed to Kery A. Fries, at 571-272-7757.

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

cc; Adjusted Pair Calculation

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

Meyertons, Hood, Kivlin, Kowert, Goetzel/Symantec
P.O. Box 398
Austin, TX 78767-0398

Mail Date: 04/20/2010

Applicant	: Peter C. Abrams	: DECISION ON REQUEST FOR
Patent Number	: 7596784	: RECALCULATION of PATENT
Issue Date	: 09/29/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/950,559	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/10/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2232** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER, EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

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JUL 20 2009

OFFICE OF PETITIONS

In re Application of
Richard A. Hofer et al
Application No. 09/950,563
Filed: September 10, 2001
Attorney Docket No. 018158-008220US

ON PETITION

This is a decision on the petition filed June 11, 2009 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the Issue fee and Publication Fee in a timely manner in reply to the Notice of Allowance mailed March 10, 2009, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on June 11, 2009.

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

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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3210. This matter is being referred to the Office of Data Management for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Andrew Pang
1700 E. Saint Andrew Place
Santa Ana, CA 92705

Doc Code: PET.OP
Document Description: Petition for Review by the Office of Petitions

PTO/SB/64 (06-09)
Approved for use through 06/30/2009. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional): 018158-008220US

First named inventor: RICHARD A. HOFER

Application No.: 09/950,563 Art Unit: 3769

Filed: September 10, 2007 Examiner: David M. Shay

Title: SYSTEMS AND METHODS FOR CORNEAL SURFACE ABLATION TO CORRECT HYPEROPIA

07/20/2009 CKHLOK 00000007 502317 09950563
Sale Ref: 00000007 DAA: 502317 09950563
01 FC:1581 1510.00 DA

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

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

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus any extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional

1. Petition Fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Application claims small entity status. See 37 CFR 1.27.

☑ Other than small entity-fee $ 1,620.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Fee Transmittal, issue and publication fees (identify type of reply):

☐ has been filed previously on _____.

☑ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ 1810.00

Adjustment Date: 07/20/2009 CKHLOK
06/12/2009 INIEFSU 00000872 502317 09950563
02 FC:1511 1510.00 CR

☐ has been paid previously on _____.

☑ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which 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 1.0 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: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☑ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ 140.00 for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

Signature	June 11, 2009 Date
Andrew Pang Type or Printed name	40,114 Registration Number, If applicable
1700 E. Saint Andrew Place Address	714-247-8853 Telephone Number
Santa Ana, CA 92705 Address	

Enclosures:

☑ Fee Payment

☑ Reply

☑ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☑ Other: Statement under 37 CFR 3.73(b), Fee Transmittal (PTOL-85 Part B)

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

Date	Signature
	Typed or printed name of person signing certificate

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

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

Mail Date: 04/21/2010

Applicant	: Richard A. Hofer	: DECISION ON REQUEST FOR
Patent Number	: 7582081	: RECALCULATION of PATENT
Issue Date	: 09/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/950,563	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/10/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1451** 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

HARVEY S. KAUGET
PHELPS DUNBAR, LLP
100 S. ASHLEY DRIVE
SUITE 1900
TAMPA, FL 33602-5311

MAILED

JUL 14 2009

OFFICE OF PETITIONS

In re Application of :
Bertram V. Burke :
Application No. 09/950,566 : DECISION DISMISSING PETITIONS
Filed: September 11, 2001 : UNDER 37 CFR 78(a)(6)
Attorney Docket No. 23012.0008 :

This is a decision on the petition under 37 CFR § 1.78(a)(6), filed May 21, 2009, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR § 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §1.78(a)(5)(ii). In addition, the petition under 37 CFR §1.78(a)(6) must be accompanied by:

(1) the reference required by 35 U.S.C. 35 U.S.C. § 119(e) and 37 CFR § 1.78(a)(6) 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)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional where there is a question whether the delay was unintentional.

The petition does not comply with items (1) and (3).

The amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35 U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. §

120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

Before the petition under 37 CFR §§ 1.78(a)(6) can be granted, a renewed petition and either an Application Data Sheet or a substitute amendment (complying with the provisions of 37 CFR 1.121 and 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 April M. Wise at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center

/dab/
David Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

HARVEY S. KAUGET
PHELPS DUNBAR, LLP
100 S. ASHLEY DRIVE
SUITE 1900
TAMPA, FL 33602-5311

COPY MAILED

AUG 11 2009

OFFICE OF PETITIONS

In re Application of :
Bertram V. Burke :
Application No. 09/950,566 : DECISION ON PETITION
Filed: September 11, 2001 : UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 23012.0008 :

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed July 21, 2009, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED.**

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim for priority under 35 U.S.C. § 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

The application is being forwarded to Technology Center AU 3693 for consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to the prior-filed provisional application.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/950,566	09/11/2001	3693	535	23012.0008	1	1

CONFIRMATION NO. 9882

CORRECTED FILING RECEIPT

65552
HARVEY S. KAUGET
PHELPS DUNBAR, LLP
100 S. ASHLEY DRIVE
SUITE 1900
TAMPA, FL 33602-5311

Date Mailed: 07/30/2009

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

Applicant(s)

Bertram V. Burke, Red Bank, NJ;

Power of Attorney: The patent practitioners associated with Customer Number 65552

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/231,639 09/11/2000
and claims benefit of 60/231,646 09/11/2000
and claims benefit of 60/231,647 09/11/2000
and claims benefit of 60/231,822 09/11/2000
and claims benefit of 60/231,823 09/11/2000

Foreign Applications

If Required, Foreign Filing License Granted: 10/10/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/950,566**

Projected Publication Date: Not Applicable

Non-Publication Request: No

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

Title

Creation and distribution of deposits and payments to financial institutions

Preliminary Class

705

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/950,566	09/11/2001	Bertram V. Burke	1357-12U

CONFIRMATION NO. 9882

65552
HARVEY S. KAUGET
PHELPS DUNBAR, LLP
100 S. ASHLEY DRIVE
SUITE 1900
TAMPA, FL 33602-5311

POA ACCEPTANCE LETTER

Date Mailed: 07/30/2009

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 05/04/2009.

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.

/evburns/

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

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BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP
1279 OAKMEAD PKWY
SUNNYVALE, CA 94086

MAIL

APR 1 3 2005

**DIRECTOR OFFICE
TECHNOLOGY CENTER 2100**

In re Application of:
Janardhanan JAWAHAR, et al.
Application No. 09/950,569
Filed: September 10, 2001
For: METHODS AND APPARATUS FOR ENABLING DYNAMIC RESOURCE COLLABORATION

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request to Withdraw from Representation filed October 26, 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 signer of the petition, Tarek N. Fahmi, is not an attorney or agent of record; therefore he is not authorized to act on behalf of the attorney(s) of record. Accordingly, the request is **DENIED.**

All future communications from the Office will continue to be directed to the below-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the 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: SCHWEGMAN, LUNDBERG, WOESNNER & KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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)
6723773	2004-04-20	09950591	2001-09-13	181.001

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity

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

Small Entity

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

SURCHARGE

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

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

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Mitchell A. Smolow/	Date (YYYY-MM-DD)	2009-10-19
Name	Mitchell A. Smolow	Registration Number	43140

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

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

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6723773
Issue Date: April 20,2004
Application No. 09950591
Filed: September 13,2001
Attorney Docket No. 0175-0306P

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

This is a decision on the electronic petition, filed October 19,2009 ,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 October 19,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNERLLP
1300 I STREET, NW
WASHINGTON, DC 20005

COPY MAILED

FEB 26 2004

OFFICE OF PETITIONS

In re Application of :
Thomas J. Caggiano, et al. :
Application No. 09/950,634 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 08702-0007-01 :

This is a decision on the petition, filed February 13, 2004, to correct assignment data on Form PTOL-85(b).

The petition 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.

The application is being referred to the Publishing Division to be processed into a patent.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 16

Sim Hughes Ashton & McKay
Barristers & Solicitors
6th Floor, 330 University Avenue
Toronto, Ontario, Canada M5G 1R7

COPY MAILED
NOV 2 0 2003
OFFICE OF PETITIONS

In re Application of :
George A. Cates et al. :
Application No. 09/950,655 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 1038-1198 MIS:jb :

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

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Restriction mailed December 17, 2002, 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 18, 2003.

The application file will be forwarded to Technology Center AU 1648 for further processing.

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

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
For Patent 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

Siemens Corporation
Intellectual Property Department
186 Wood Avenue South
Iselin NJ 08830

COPY MAILED

AUG 1 2 2002

OFFICE OF PETITIONS

ON PETITION

In re Application of:
Kreidler, et al.
Application No. 09/950,726
Filed: September 12, 2001
Attorney Docket No. 2000 P 20824 US 01

This is a decision on the April 23, 2002 petition under 37 C.F.R. §1.137(b) to revive the above-identified application.

This application became abandoned due to applicant's failure to timely file a proper reply to the notice to file missing parts, mailed on October 9, 2001. The notice stated that the application lacked a properly signed declaration and that the drawing sheets were not compliant with 37 C.F.R. §1.84. A shortened statutory period of two (2) months was set for replying.

On March 12, 2002, Applicants filed their response in the form of a three month extension of time and a declaration/power of attorney. However, the response did not include new drawings.

Accordingly, on April 2, 2002, the office mailed a notice of incomplete reply. The notice did not extend the allowable period for replying.

The maximum extendable time period lapsed without reply. Consequently, the application became abandoned on March 11, 2002.[1]

All requirements for the filing of a grantable petition under 37 C.F.R. §1.137(b) to revive an unintentionally abandoned application have been met. Therefore, this petition is **GRANTED**.

The statement of unintentional delay presented in the petition does not comply with the current rule. Effective December 1, 1997, 37 C.F.R. §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 C.F.R. §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 C.F.R. §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 petition fee will be charged to Petitioner's deposit account (da#19-2179).

This file is being forwarded to the Office of Initial Patent Examination.

---

[1] See 35 U.S.C. §133, 37 C.F.R. §1.134-136.

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 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

WHITE & CASE LLP
PATENT DEPARTMENT
1155 AVENUE OF THE AMERICAS
NEW YORK NY 10036

COPY MAILED

JAN 2 8 2005

OFFICE OF PETITIONS

In re Application of :
Volker Kreidler et al :
Application No. 09/950,726 : ON PETITION
Filed: September 12, 2001 :
Attorney Docket No. 2000 P 20824 US 01 :

This is a decision on the petition, filed January 26, 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 11, 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 2125 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

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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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WHITE & CASE LLP
PATENT DEPARTMENT
1155 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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JAN 2 8 2005

OFFICE OF PETITIONS

ON PETITION

In re Application of
Volker Kreidler et al
Application No. 09/950,726
Filed: September 12, 2001
Attorney Docket No. 2000 P 20824 US 01

This is a decision on the petition, filed January 26, 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 11, 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 2125 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

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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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OFFICE OF PETITIONS

WHITE & CASE LLP
PATENT DEPARTMENT
1155 AVENUE OF THE AMERICAS
NEW YORK NY 10036

In re Application of :
Volker Kreidler et al :
Application No. 09/950,726 : ON PETITION
Filed: September 12, 2001 :
Attorney Docket No. 2000 P 20824 US 01 :

This is a decision on the petition, filed November 13, 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 September 12, 2006, in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2125 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy
Petitions Examiner
Office of Petitions

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new 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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WHITE & CASE LLP
PATENT DEPARTMENT
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

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MAY 04 2007

OFFICE OF PETITIONS

In re Application of :
Volker Kreidler et al :
Application No. 09/950,726 : DECISION GRANTING PETITION
Filed: September 12, 2001 : UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 1140668-0019 :

This is a decision on the petition, filed May 2, 2007, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on February 22, 2007 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 2125 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the Information Disclosure Statement..

Frances Hicks
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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DOCKET ADMINISTRATOR (ROOM 3J-219)
LUCENT TECHNOLOGIES INC.
101 CRAWFORDS CORNER ROAD
HOLMDEL NJ 07733-3030

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FEB 06 2008
OFFICE OF PETITIONS

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FEB 06 2008
OFFICE OF PETITIONS

In re Application of :
Achilles George Kogiantis et al :
Application No. 09/950,741 : DECISION ON PETITION
Filed: September 12, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 10-5 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed October 22, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed with the 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 Director may require additional information where there is a question whether the delay was unintentional.

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

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the

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

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

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to Technology Center Art Unit 2614 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed applications.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/950,741	09/12/2001	2614	760	10-5	8	1

CONFIRMATION NO. 2308

Docket Administrator (Room 3J-219)
Lucent Technologies Inc.
101 Crawfords Corner Road
Holmdel, NJ 07733-3030

CORRECTED FILING RECEIPT

Date Mailed: 02/06/2008

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

Applicant(s)

Achilles George Kogiantis, Madison, NJ;
Lawrence Howard Ozarow, Morris Township, NJ;

Power of Attorney:

Barry Freedman--26166	Gregory Ranieri--29695
Ronald Slusky--26585	Martin Finston--31613
Stephen Gurey--27336	Christopher Malvone--34866
Charles Warren--27407	Neil Ormos--35309
Michael Morra--28975	Michael Johannesen--35557

Domestic Priority data as claimed by applicant

This application is a CIP of 09/727,896 12/01/2000 PAT 6,751,480

Foreign Applications

If Required, Foreign Filing License Granted: 10/11/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/950,741**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Method of allocating power for the simultaneous downlink conveyance of information between multiple antennas and multiple destinations

Preliminary Class

455

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

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

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

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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QUALCOMM INCORPORATED
5775 MOREHOUSE DR.
SAN DIEGO, CA 92121

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AUG 22 2008

In re Application of :
Parvathanathan Subrahmanya, et. al. :
Application No. 09/950,744 : DECISION ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 010469 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 11, 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 December 10, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed September 10, 2007. Accordingly, the date of abandonment of this application is December 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 payment of the issue fee of $1440 and the publication fee of $300, (2) the petition fee of $1540; and (3) an adequate statement of unintentional delay.

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

There is no indication that the person signing the petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. However, in accordance with 37CFR 1.34(a), the signature of David J. Huffaker appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts.

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.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

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

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 6

Arent Fox Kintner Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

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JAN 0 8 2004

OFFICE OF PETITIONS

In re Application of :
Jian Sun et al. :
Application No. 09/950,755 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 023380-00001 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 24, 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 Notice to File Corrected Application Papers Notice mailed October 12, 2001. The Notice set a reply period for TWO (2) 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 December 13, 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
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Application of
Shinichi SUZUKI ET AL
Serial No. 09/950,772
Filed: September 13, 2001
Title: 5-SUBSTITUTED HYDANTOIN RACEMASE, DNA CODING FOR THE RACEMASE, AND PROCESSES FOR PRODUCING OPTICALLY ACTIVE AMINO ACIDS.

This is a decision on the petition under 37 C.F.R. § 1.181(a)(3) to request acknowledgement of references cited on an Information Disclosure Statement (IDS) filed June 18, 2004.

The petition is granted.

Please see the accompanying Office communication in which examiner has indicated consideration of the cited references on form 1449, a copy of which is also attached herewith.

Ponnathapura N. Achutamurthy
Supervisory Patent Examiner
Art Unit 1652

(Attorney address)

UNITED STATES 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
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

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JAN 0 5 2005

OFFICE OF PETITIONS

In re Application of :
Jukka-Pekka Salmenkaita et al :
Application No. 09/950,773 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 4208-4025 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 8, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing an appeal brief in triplicate (accompanied by the fee required by 37 CFR 1.17(c)), runs from the date of this decision.

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 3, 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 September 2, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed December 3, 2004. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, and no extension of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on September 4, 2004.

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

This matter is being referred to Technology Center AU 2165.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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DIW 01-02

Paper No. 4

NORRIS MCLAUGHLIN & MARCUS, P.A.
P O BOX 1018
SOMERVILLE NJ 08876

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JAN 2 4 2002

OFFICE OF PETITIONS

In re Application of	:	
Ryan et al.	:	DECISION GRANTING
Application No. 09/950,793	:	PETITION
Filed: 13 September, 2001	:	
Attorney Docket No.	:	

This is a decision the petition filed on 31 October, 2001, requesting that the "Notice of Incomplete Application" mailed on 12 October, 2001, be withdrawn.

The petition is **granted**.

On 13 September, 2001, the application was filed.

On 12 October, 2001, Initial Patent Examination Division mailed a "Notice of Incomplete Application" stating that the application had not been accorded a filing date because the application had been deposited without drawings. The Notice stated that the application would be accorded a filing date of the date the drawings were received.

In response, on 31 October, 2001, the present petition was filed. Petitioners assert that the application as filed included two (2) sheets of drawings. In support, a copy of petitioners' postcard receipt was supplied with the petition. The postcard receipt contains an Office date stamp of 13 September, 2001, and the above-identified application number, and itemizes the filing of, *inter alia*, two (2) sheets of formal drawings. Petitioners request that the application, including the two (2) sheets of drawings, be accorded a filing date of 13 September, 2001. The two (2) sheets of drawings filed on 13 September, 2001, have been located in the Official file.

Petitioners also state that the application was deposited in Express Mail Post Office to Addressee service on 12 September, 2001. If petitioners request that the application be accorded a filing date of 12 September, 2001, a petition under 37 CFR 1.10, accompanied by the requisite proof of mailing by Express Mail, must be filed. Petitioners should also note that there is no provision in the regulations or the MPEP for use of a certificate of mailing by "Express Mail".

The application will be processed and examined using the original application papers. The petition fee of $130.00 paid on 31 October, 2001 will be refunded to counsel's deposit account, No. 14-1263. The two (2) sheets of drawings supplied on 31 October, 2001, will not be used for processing or examination purposes, but will be retained in the application file.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 13 September, 2001, using the application papers filed on that date.

Telephone inquiries specific to this matter should be directed to Petition Attorney Douglas I. Wood at (703) 308-6918.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DRW 07-02

Paper No. 6

NORRIS MCLAUGHLIN & MARCUS, P.A.
P O BOX 1018
SOMERVILLE NJ 08876

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AUG 0 1 2002

OFFICE OF PETITIONS

In re Application of	:	
Ryan et al.	:	
Application No. 09/950,793	:	DECISION DISMISSING
Filed: 13 September, 2001	:	PETITION
Attorney Docket No. 68958-003 US	:	

This is a decision on the petition under 37 CFR 1.10, filed on 8 May, 2002, requesting that the above-identified application be accorded a filing date of 12 September, 2001, rather than the presently accorded filing date of 13 September, 2001.

The petition is again dismissed.

Petitioners allege that the application was deposited in Express Mail service on 12 September, 2001. In support, petitioners have provided a copy of a USPS Fax Transmission stating that an Express Mail shipment bearing Express Mail No. EL809666583US (the same Express Mail label number found on the itemized transmittal letter accompanying the original application papers located in the official file) showing that the application was delivered on 13 September, 2001.

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show 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 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 papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

The instant petition lacks the showing required by item (1).

In regards to item (1), petitioners should note that in the absence of convincing evidence of the date of deposit, the application will be accorded a filing date as of the date of receipt in the USPTO.[1] In this case, petitioners have failed to establish 12 September, 2001, as the date the application was **deposited with the USPS.**

Petitioners point to the USPS Fax transmission showing that the application was delivered to the USPTO on 13 September, 2001, as evidence that the application was deposited with the USPS on 12 September, 2001. Petitioners argument is without merit, however, as the USPS Fax transmission is probative evidence only as to what is contained within that document, that is, that the application was delivered to the USPTO on 13 September, 2001. Petitioners are in essence demanding the Office assume that applications deposited in Express Mail are always delivered to the USPTO the day after they are deposited. Such an argument is inapposite with the requirement of 37 CFR 1.10, which is that an applicant is entitled to a filing date of the date the application was deposited with the USPS. A prerequisite to the grant to a petition under 37 CFR 1.10 is that the applicant must provide a showing that the correspondence was deposited as Express Mail prior to the last scheduled pickup on the requested filing date.

Petitioners should provide a copy of the Express Mail label showing the date in, or other evidence from the USPS showing the date the application was *deposited as Express Mail*, with any renewed petition.

---

[1] 37 CFR 1.6(a).

As no fee is required with any petition under 37 CFR 1.10, the petition fee of $130.00 will be credited to counsel's deposit account, No. 14-1263.

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

By mail: Commissioner of Patents and Trademarks
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

The application is being forwarded to Technology Center 2100 for examination in due course.

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

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

BROWDY AND NEIMARK, P.L.L.C.
624 NINTH STREET, NW
SUITE 300
WASHINGTON, DC 20001-5303

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AUG 3 0 2002

OFFICE OF PETITIONS

In re Application of
Hadad et al.
Application No. 09/950,811
Filed: September 13, 2001
Attorney Docket No. HADAD=1

: DECISION ACCORDING
: STATUS UNDER
: 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed on February 4, 2002, requesting that an inventor be allowed to file the application on behalf of himself and the joint-inventor who allegedly refuses to join in this application.

The petition is **GRANTED.**

There are 2 inventors named for the invention claimed in this application: Zion Hadad ("Hadad") and Yossef Barak ("Barak"). The application was filed on September 13, 2001 without an oath or declaration 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 October 9, 2001 ("10/9/01 Notice"), giving Applicants an extendable 2-month period within which to submit, *inter alia*,[1] a proper oath or declaration. In response, the instant petition was filed along with a request for a 2-month extension of time and the requisite extension-of-time fee for submitting the missing items. The petition encloses a "Combined Declaration for Patent Application and Power of Attorney" that is signed only by Hadad ("2/4/02 Declaration"), and requests that Hadad be allowed to file this application on behalf of himself and of Barak for the reason that Barak has refused to join in this application.

Hadad may file this application on behalf of himself as well as Barak, provided that a *bona fide* attempt has been made to present to Barak, for signature, a copy of the entire application, including the specification, claims, drawings;[2] and that the latter refuses to join in this application. To show that Barak has refused to join in this application despite a *bona fide* attempt made to present to him 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 Barak at his last known address,[3] and his subsequent refusal.[4]

The instant petition relies on the declarations of 2 individuals, Rachel Shrem ("Shrem") ("Shrem

---

1 Also missing were: the basic filing fee for this application and the extra claims fees.

2 MPEP section 409.03(d) (Aug. 2001) REFUSAL TO JOIN.

3 37 CFR 1.47(a); also see MPEP section 409.03(e) (Aug. 2001).

4 See MPEP section 409.03(d) (Aug. 2001).

Declaration") and Gil Ingel ("Ingel") ("Ingel Declaration"), to support the assertion that Barak has refused to join in this application.[5] These declarations and the accompanying Exhibits A-B, copies of which are enclosed with the petition, in essence set forth that a copy of the application (specification including claims; drawings) was mailed by Shrem to Barak on November 20, 2001,[6] and that Barak indicated his refusal to sign the application papers during a November 1, 2001 telephone inquiry on this matter from Ingel.[7]

In view of the above, the Office concludes that a *bona fide* attempt has been made to present to Barak, for signature, a copy of the entire application including the specification, claims and drawings; and that Barak refused to join in this application. The petition is thus granted and the 2/4/02 Declaration is hereby accepted. The application is now complete.[8]

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Barak at his last known address provided in the petition: 34 Katznelson Street, Rishon Lezion 75211 Israel. 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 2/4/02 Declaration and for mailing of a filing receipt if one has not already been issued. Thereafter, the application will be forwarded to the appropriate Technology Center for examination in due course.

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

---

[5] Petition, page 1, 1st paragraph.

[6] Exhibit B (Shrem 11/20/01 cover letter to Barak), 1st paragraph.

[7] Ingel Declaration, page 2, last full paragraph. Although Shrem apparently mailed the application "forms" to Barak on 9/23/01, it is not clear whether that mailing contained a copy of the entire application, including specification, claims, drawings. See Shrem Declaration, page 2, last full paragraph.

[8] The petition also encloses the $740 basic filing fee for the application, the $108 for 6 claims in excess of 20, the $280 for multiple dependent claims, all as response to the 10/9/01 Notice; as well as the $130 petition fee and the $130 for failing to submit an acceptable oath/declaration upon filing of the application.

In addition, a Notice to File Corrected Application Papers was mailed on 2/26/02, requesting that the application abstract be on a separate sheet of paper as specified in 37 CFR 1.72(b). Such an "Abstract of the Disclosure" was filed on 3/6/02.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Yossef Barak
34 Katznelson Street
Rishon Lezion 75211
Israel

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AUG 3 0 2002

OFFICE OF PETITIONS

In re Application of
Hadad et al.
Application No. 09/950,811
Filed: September 13, 2001
For: BI-DIRECTIONAL WIRELESS COMMUNICATION

: LETTER

Dear Mr. Barak,

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 for the United States Patent and Trademark Office [USPTO]). 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 pursuant to 37 CFR 1.19), or make your position of record in the application. Alternatively, you may do any of the aforementioned through an attorney or agent registered to practice before the USPTO and 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.

Requests for information regarding this application should be directed to the File Information Unit at (703) 308-2733. For information on how to order a copy of the application or a specific paper in the application, contact the Certification Division at (703) 308-9726 or 1-(800) 972-6382 (outside the Washington DC area). Telephone inquiries regarding this letter 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

cc: Roger L. Browdy, Esq.
Browdy and Neimark, P.L.L.C.
624 Ninth Street, NW, Suite 300
Washington, DC 20001-5303
Attorney Docket No. HADAD=1

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION - WEST BLDG.
WINTON HILL BUSINESS CENTER - BOX 412
6250 CENTER HILL AVENUE
CINCINNATI OH 45224

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JUL 09 2008

OFFICE OF PETITIONS

In re Application of :
Richard Lawrence Horstman et al :
Application No. 09/950,841 : DECISION GRANTING PETITION
Filed: September 11, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No. 8688 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 15, 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 the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed December 5, 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 the Office of Data Management to be processed into a patent.

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No.

ANNA Y. TSANG
BAKER & MCKENZIE
15F, NO. 168, TUN HWA NORTH ROAD
TAIPEI, TAIWAN 105,
THE REPUBLIC OF CHINA
TAIWAN

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OCT 0 5 2004

OFFICE OF PETITIONS

In re Application of	:	
Wen Long Chen	:	
Patent No. 6,618,269	:	
Issued: September 9, 2003	:	
Application No. 09/950,856	:	
Filed: September 10, 2001	:	ON PETITION
Title of Invention:	:	
DISCREET CIRCUIT COMPONENT AND	:	
PROCESS OF FABRICATION	:	

This is a decision on the Petition Under 37 CFR 1.182 to Replace Lost Original Patent, filed September 7, 2004.

The Petition is **granted**.

The Publishing Division is directed to issue a duplicate Letters Patent. Any questions concerning issuance of the duplicate Letters Patent should be directed to Krystal Paige at (703) 305-9080.

Notice of this Decision will be forwarded to the Publishing Division for issuance of the duplicate Letters Patent.

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

Derek L. Woods
Attorney/Advisor
Office of Petitions

cc: Krystal Paige, Crystal Park 3-910 (FAX 703-746-4642)

cc: BAKER & MCKENZIE
2001 Ross Avenue
Dallas, TX 75021

BAKER & MCKENZIE
國際通商法律事務所

Facsimile Transmission

Baker & McKenzie
15/F, 168 Tun Hwa North Road
Taipei 105, Taiwan, R.O.C.
台北市105敦化北路168號15樓

Tel: +886 2 2712 6151
Fax: +886 2 2716 9250
www.bakernet.com

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OCT 11 2005

Date	October 11, 2005	**Fax**
To	Krystal Paige The Publishing Division, USPTO	+1 703 746 4642 +1 571 273 8300
CC	Shan Paul, Baker & McKenzie, Taipei Office	
From	Elva Yeh, Baker & McKenzie, Taipei Office	
Ref Info	87146572-000003	
Re	A Duplicate Letters Patent for US Patent No. 6618269	
Pages (w/cover)	3	

Dear Krystal,

We would like to ask your urgent assistance in the captioned patent.

On October 22, 2004, we received a decision (filed on September 7, 2004) which granted our Petition to Replace Lost Original Patent for this patent . It was also indicated in said decision that the Publishing Division will issue a Duplicate Letters Patent to us. However, we have yet received said patent Certificate until now. In addition, we checked the USPTO's transaction history and noticed the last records show "October 5, 2004 - Petition Decision - Granted." Does it mean that our Duplicate Letters Patent still keep in your office? Could you please check and let us know when we can expect to receive the Duplicate Letters Patent. Thank you very much.

Your promptly reply will be appreciated.

Best regards,

Elva Yeh

Elva Yeh
Patent Assistant
+886 2 2715 7342
elva.yeh@bakernet.com

Encls. 1. A copy of the Notice of Decision issues from USPTO; and
2. A copy of Transaction History (from USPTO's webside)

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Paper No.

ANNA Y. TSANG
BAKER & MCKENZIE
15F, NO. 168, TUN HWA NORTH ROAD
TAIPEI, TAIWAN 105,
THE REPUBLIC OF CHINA
TAIWAN

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OCT 0 5 2004

OFFICE OF PETITIONS

In re Application of :
Wen Long Chen :
Patent No. 6,618,269 :
Issued: September 9, 2003 :
Application No. 09/950,856 :
Filed: September 10, 2001 : ON PETITION
Title of Invention: :
DISCREET CIRCUIT COMPONENT AND :
PROCESS OF FABRICATION :

This is a decision on the Petition Under 37 CFR 1.182 to Replace Lost Original Patent, filed September 7, 2004.

The Petition is **granted**.

The Publishing Division is directed to issue a duplicate Letters Patent. Any questions concerning issuance of the duplicate Letters Patent should be directed to Krystal Paige at (703) 305-9080.

Notice of this Decision will be forwarded to the Publishing Division for issuance of the duplicate Letters Patent.

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

Derek L. Woods
Attorney/Advisor
Office of Petitions

cc: Krystal Paige, Crystal Park 3-910 (FAX 703-746-4642)

cc: BAKER & MCKENZIE
2001 Ross Avenue
Dallas, TX 75021

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OCT 2 2 2004
BAKER MCKENZIE-TPE

11-OCT-2005 17:16 FROM TAPEI TAIWAN TO 00215712738300#119 P.03

PAGE 3/3 * RCVD AT 10/11/2005 5:11:01 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/24 * DNIS:2738300 * CSID:886 2 27169250 * DURATION (mm-ss):01-38 P.03

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09/950,856 DISCRETE CIRCUIT COMPONENT AND PROCESS OF FABRICATION

Application Data | Transaction History | Image File Wrapper | Foreign Priority | Published Documents | Fees | Publication Dates | Address & Attorney/Agent

Date	Contents Description
10-05-2004	**Petition Decision - Granted**
03-09-2004	Petition Entered
09-09-2003	**Recordation of Patent Grant Mailed**
08-21-2003	Issue Notification Mailed
09-09-2003	**Patent Issue Date Used in PTA Calculation**
08-11-2003	Receipt into Pubs
08-11-2003	**Receipt into Pubs**
07-23-2003	Receipt into Pubs
06-27-2003	**Application is Considered Ready for Issue**
05-05-2003	Issue Fee Payment Verified
09-10-2001	**Workflow - Drawings Finished**
09-10-2001	Workflow - Drawings Matched with File at Contractor
05-05-2003	**Applicant Has Filed a Verified Statement of Small Entity Status in Compliance with 37 CFR 1.27**

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JOSEPH S. TRIPOLI
THOMSON MULTIMEDIA LICENSING INC.
2 INDEPENDENCE WAY
P.O. BOX 5312
PRINCETON NJ 08543-5312

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JAN 04 2010

In re Application of	:	
Stahl et al.	:	
Application No. 09/950,863	:	ON PETITION
Filed: September 12, 2001	:	
Attorney Docket No. PU010175	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 9, 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 Request for Continued Examination (RCE), (2) the petition fee, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

This matter is being referred to Technology Center AU 2424 for further processing of the RCE under 37 CFR 1.114 filed concurrently with the instant petition.

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTELLECTUAL PROPERLY LAW DEPT.
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

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JUN 22 2007

OFFICE OF PETITIONS

In re Application of :
TOMITA, JR. et al :
Application No.: 09/950,878 : DECISION ON PETITION
Filing Date: September 12, 2001 : UNDER 37 CFR 1.137(B)
Attorney Docket No.: JP920000273US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed March 14, 2007, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to submit the issue fee and publication fee in a timely manner in reply to the Notice of Allowance mailed October 26, 2006, which set a statutory period for reply of three (3) months. Accordingly, by operation of law, the above-identified application became abandoned on January 27, 2007.

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

Applicant is advised that 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 correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

This application is being referred to the Office of Publications.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3303.

Bryan Lin

Bryan Lin
Legal Examiner
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

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APR 15 2004

OFFICE OF PETITIONS

In re Application of :
Francisco Villagran, et al. :
Application No. 09/950,900 : ON PETITION
Filed: September 10, 2001 :
Attorney Docket No. 8706 :

This is a decision on the petition, filed April 13, 2004, under 37 CFR(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 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.

The application is being forwarded to Technology Center AU 1761 for further processing of the request for continued examination under 37 CFR 1.114.

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

[1]The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is 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

DEC -7 2005

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

Clifford E. Wilkins, Jr.
Colgate-Palmolive Company
PO Box 1343
Piscataway, New Jersey 08855-1343

In re Application of: Vesborg :
Appl. No.:09/950,910 : DECISION ON PETITION
Filed: September 12, 2001 :
For: HOLOGRAPHIC IMAGES :

This is a decision is in response to the letter of July 12, 2005 which is construed to be a petition to accord the appropriate date to the Notice of Appeal, a copy of which accompanied the letter of July 12, 2005. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Review of the record indicates a Brief on Appeal was received on June 1, 2005 while the record failed to reflect the filing of a Notice of Appeal. After being contacted by the examiner, on July 12, 2005 petitioner submitted a copy of the Notice of Appeal which includes a certificate of mailing indicating a mail date of April 1, 2005. This appears to coincide with an April 5, 2005 charge to petitioner's deposit account for the filing of a Notice of Appeal. It is noted the record also reflects a second charge to petitioner's deposit account for the filing of a Notice of Appeal on July 12, 2005.

It appears the Notice of Appeal of April 1, 2005 was received in the office in as much as the office knew to charge petitioner appropriately however no record of the paper was made into either the Image File Wrapper (IFW) system or to the PALM system. Alternatively, the copy of the Notice of Appeal includes evidence of timely filing.

Accordingly, the application is being forwarded to the Head Supervisory Applications Examiner in Technology Center 3700 to have an entry in the PALM system made to show that the Notice of Appeal was received prior to receipt of the Brief by utilizing the April 1, 2005 certificate of mail date present on the July 12, 2005 copy. The Head Supervisory Applications Examiner will also appropriately reflect such changes in the IFW system, and process a refund of the second charge for filing of a Notice of Appeal dated July 12, 2005. The application will then be forwarded to the examiner for further prosecution on the merits.

PETITION GRANTED

Richard A. Bertsch, Director
Technology Center 3700

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.6

LEONARD CHARLES SUCHYTA ESQ
C/O CHRISTIAN ANDERSEN
VERIZON SERVICES GROUP
600 HIDDEN RIDGE, HQE03H01
IRVING TX 75038

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JUN 1 9 2002

OFFICE OF PETITIONS

In re Application of
Raymond C. Counterman
Application No. 09/950,919
Filed: September 10, 2001
Attorney Docket No. 97-825CON1

:DECISION DISMISSING PETITION
:UNDER 37 CFR 1.137(f) AND
:GRANTING PETITION UNDER
:37 CFR 1.10(c)

This is a decision on the petition under 37 CFR 1.137(f),[1] filed March 26, 2002, to revive the above-identified application. This is also in response to the concurrently filed "Request for Corrected Filing Receipt," which is being treated as a petition under 37 CFR 1.10(c) to accord the above-identified application an earlier filing date of September 10, 2001, rather than the presently accorded filing date of September 12, 2001.

The petition under 37 CFR 1.137(f) is **dismissed** as inappropriate for the reasons stated below.

The petition under 37 CFR 1.10(c) is **granted.**

Turning first to the petition under 37 CFR 1.137(f), the record discloses that, on September 10, 2001, the date of filing of the instant application, a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing."

---

[1] 37 CFR 1.137(f) provides for revival of a nonprovisional application which became abandoned pursuant to the provisions of 35 U.S.C. § 122(b)(2)(B)(iii) 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.

Petitioner requests under 35 U.S.C. § 122(b)(2)(B)(ii) that the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) be rescinded and the application revived under the provisions of 37 CFR 1.137(f). Petitioner states that this application became abandoned on its filing date in view of the filing of a PCT application on November 22, 1999, corresponding to the parent application (09/197,966).

The instant nonprovisional application did not become abandoned as a result of the published international application **filed prior** to the present application. In this regard, 35 U.S.C. § 122((b)(2)(B)(iii) states:

> An applicant who has made a request under clause (i) but who **subsequently files, in a foreign country or under a multilateral international agreement** specified in clause (i), an application directed to the invention disclosed in the application filed in the Patent and Trademark Office, shall notify the Director of such filing not later than 45 days **after the date of the filing of such foreign or international application**. A failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional [emphasis supplied].

The statute does not provide for the situation where a certification under 35 USC 122(b)(2)(B)(i) was made, despite the fact that an application was previously filed in another country or under the multilateral international agreement. The statute at 35 USC 122(b)(2)(B)(iii) only provides for revival in the situation where a certification was made under 35 USC 122(b)(2)(B)(i) at the time of filing the application and an application was **subsequently** filed in a foreign country without notifying the Office within 45 days of the filing thereof.

In view of the above and since this application did not become abandoned pursuant to the provisions of 35 USC 122(b)(2)(B)(iii), a petition to revive under the provisions of 37 CFR 1.137(f) is inappropriate and must be dismissed.

As requested, the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Corrected Filing Receipt indicating the projected date of publication of September 26, 2002 accompanies this decision.

The rules and statutory provisions governing the operations of the U.S. Patent and Trademark Office require payment of a fee on filing each petition. *See* 35 U.S.C. § 41(c)(7). Accordingly, the petition fee of $1,280 charged to petitioner's deposit account on March 27, 2002 will not be refunded.

Turning lastly to the petition under 37 CFR 1.10(c) to accord the instant application an earlier filing date of September 10, 2001, applicant requests the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on September 10, 2001, pursuant to 37 CFR 1.10. In support, applicant has submitted a copy of Express Mail label No. EK966291590US showing a handwritten "date-in" of September 10, 2001, as well as a "POSTAL STORE WALTHAM MA" September 10, 2001 USPS receipt stamp. The same Express Mail receipt number appears on the original "Continuation Application Transmittal Form," which includes the above-noted Express Mail label number. Additionally, the Express Mail label number appears on the Certificate of Mailing by "Express Mail" and includes a statement of express mailing dated September 10, 2001 on the transmittal page for the application papers and also on the first page of the application papers.

In view of the above, it is concluded that the application was deposited as "Express Mail" with the USPS on September 10, 2001.

This application is being forwarded to the Office of Initial Patent Examination Division for further **processing with a filing date of September 10, 2001.** Thereafter, the application will be forwarded to Technology Center AU 2663 for examination in due course.

Telephone inquiries concerning this matter may be directed to Frances Hicks at (703) 305-8680.

Brian Hearn

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

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AUG 2 3 2002

OFFICE OF PETITIONS

Ronald Abramson
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482

In re Application of :
Lebedevski :
Application No. 09/950,929 : ON PETITION
Filed: September 12, 2001 :
Atty. Docket No.: 79481.1200 :

This is a decision on the petition under 37 CFR 1.182, filed April 12, 2002, in response to the Notice of Incomplete Reply. This petition is also being treated under 37 CFR 1.181 as a petition to waive a minor informality within the meaning of 37 CFR 1.53(h).

Petitioner states that at the time the application was filed on September 12, 2002, he was without access to his files and databases as he was barred from entering his office which is located several blocks south of the World Trade Center.

On October 12, 2001, the USPTO mailed a Notice to File Missing Parts of Nonprovisional Application. The Notice to File Missing Parts of Nonprovisional Application indicated the application had been accorded a filing date but that the application was deemed informal as it lacked an abstract in compliance with 37 CFR 1.72(b). The Notice required applicant to submit filing fees, an executed oath or declaration along with required surcharge, and an abstract incompliance with 37 CFR 1.72(b).

Petitioner responded to the Notice on February 12, 2002 by submitting an extension of time, an executed declaration, surcharge, an amendment, an abstract, and a priority document.

On March 22, 2002, a Notice of Incomplete Reply was mailed, indicating the application was still deemed informal as the abstract submitted by applicant was not on a separate sheet as required by 37 CFR 1.52(b)(4). The Notice of Incomplete Reply required applicant to submit the abstract on a separate sheet and indicated the period of time for reply remained as set forth in the original Notice to File Missing Parts of Nonprovisional Application.

The instant petition was filed April 12, 2002 in response to the Notice of Incomplete Reply. Petitioner argues the abstract submitted February 12, 2002 in response to the Notice of Missing Parts of Nonprovisional Application was a "good-faith attempt to

comply with 37 CFR 1.52." Moreover, petitioner contends the failure to submit the abstract on a separate sheet of paper is a "minor informality" within the meaning of 37 CFR 53(h).

PETITION UNDER 37 CFR 1.182

Relief under 37 CFR 1.182 is only available for situations not specifically provided for under Title 37 of the Code of Federal Regulations. Therefore, the request for relief under 37 CFR 1.182 with regard to this matter is inappropriate given 37 CFR 1.53(h) specifically provides an application for patent filed under 37 CFR 1.53(b) or (d) will not be placed on the files for examination until all its required parts, complying with the rules relating thereto, are received, except that certain minor informalities may be waived subject to subsequent correction whenever required.
Accordingly, the petition under 37 CFR 1.182 is **DISMISSED**.

The required petition fee of $130.00 has been charged to deposit account No. 08-3264 as authorized in the instant petition.

PETITION UNDER 37 CFR 1.181

Effective September 23, 1996, 37 CFR 1.52(b) was amended to provide that the abstract of the invention must commence on a separate sheet of paper. See, 61 FR 42790. However, the Office has deemed the requirement for an abstract commencing on a separate sheet to be a "minor informality" within the meaning of 37 CFR 1.53(h). Accordingly, the minor informality of an abstract commencing on a separate sheet is hereby waived.

The petition is **GRANTED**, and the Notice of Incomplete Reply is hereby **WITHDRAWN**.

This application is being forwarded to the Office of Initial Patent Examination for further processing prior to forwarding to Group Art Unit 3722 for further action, including, if necessary, subsequent correction of the abstract.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

INGRID A. BEATTIE
C/O MINTZ, LEVIN
ONE FINANCIAL CENTER
BOSTON, MA 02111

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APR 2 2 2002

OFFICE OF PETITIONS

In re Application of :
William R. Newell :
Application No. 09/950,931 :
Filed: September 12, 2001 :
Attorney Docket No. 21127-502 CON :

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

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Paper No. 4

Samuels, Gauthier & Stevens LLP
Suite 3300
225 Franklin Street
Boston MA 02110

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FEB 1 1 2002

OFFICE OF PETITIONS

In re Application of :
DeBlois, et al. :
Application No. 09/950,942 : DECISION ON PETITION
Filed: September 11, 2001 :
Attorney Docket No. 5025 :

This is in response to the paper styled "PETITION UNDER 37 CFR 1.10, 1.53(B) AND 1.183 FOR CORRECTION OF FILING DATE" filed January 8, 2002 (certificate of mailing October 23, 2001), requesting that the above-identified application be accorded a filing date of September 11, 2001, rather than the presently accorded filing date of September 14, 2001.

As provided for in 37 CFR §§1.6(a)(2) and 1.10(a), correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

The USPTO is aware that as a result of the events in New York City on September 11, 2001, all post offices in the borough of Manhattan were closed. The Commissioner has designated the interruption in the service of the United States Postal Service (USPS) in the borough of Manhattan as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The petition filed January 8, 2002, states that the application was deposited in a USPS Express Mail drop box prior to the last scheduled pick up on September 11, 2001, and, cites the "USPTO's Notification Related to Events of September 11, 2001," in support of their request. However, the Commissioner is not aware of and petitioner does not cite a specific disruption of "Express Mail" service in Boston on September 11, 2001.

Nonetheless, it is clear that the correspondence bearing Express Mail mailing label number EL662368692US was delivered to the Office using the "Express Mail Post Office to Addressee" service of the USPS. The petition includes declarations attesting to this correspondence being placed in an Express Mail drop box at about 12:30 pm, prior to the last scheduled pickup of the day. A review of the USPTO's USPS Information Database reveals that the relevant "Express Mail" package was accepted by the USPS on September 11, 2001, albeit at 9:47 in the evening. Given the totality of the evidence, and considering the circumstances of the day, this is sufficient corroborating evidence of deposit on September 11, 2001, prior to the last scheduled pickup of the day.

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Accordingly, the petition is GRANTED.

Given the basis for granting this petition, the petition fee has been refunded to Deposit Account No. 19-0079.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2001.

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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NEW BRUNSWICK, NJ 08933-7003

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OFFICE OF PETITIONS

In re Application of :
David R. Fischell et al :
Application No. 09/950,956 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. CRD-958 :

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 9, 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 December 10, 2004.

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 $2160 extension of time submitted with the petition on April 20, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

This matter is being referred to Technology Center AU 3731 for further processing.

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

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SCHENECTADY NY 12301

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OFFICE OF PETITIONS

In re Application of :
Matthew David Butts :
Application No. 09/951,004 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. RD-29270 :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to nonprovisional applications 09/616,534 and 09/616,535.

The petition is **GRANTED**.

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

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

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

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

> The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claims herein for the benefit of priority to the above-noted, nonprovisional applications are submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) references to the above-noted, prior-filed nonprovisional applications have been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

The petition fee of $1,370 and the RCE fee of $790 have been charged to Deposit Account No. 07-0868, as authorized.

The application is being forwarded to Group Art Unit 1615 for examination.

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207.

Frances Hicks
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)

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OFFICE OF PETITIONS

In re Application of
Matthew David Butts
Application No. 09/951,004
Filed: September 14, 2001
Attorney Docket No. RD-29270

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(3), filed March 1, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to nonprovisional applications 09/616,534 and 09/616,535.

The petition is **GRANTED**.

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

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

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

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

The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claims herein for the benefit of priority to the above-noted, nonprovisional applications are submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) references to the above-noted, prior-filed nonprovisional applications have been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

The petition fee of $1,370 and the RCE fee of $790 have been charged to Deposit Account No. 07-0868, as authorized.

The application is being forwarded to Group Art Unit 1615 for examination.

Any inquiries concerning this decision may be directed to Petitions Attorney Cliff Congo at 571-272-3207.

Frances Hicks
Petitions Examiner
Office of Petitions

Enc: Corrected Filing Receipt (3 pages)

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Daniel Reitenbach
CROMPTON CORPORATION
Benson Road
Middlebury CT 06749

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MAY 19 2006

OFFICE OF PETITIONS

In re Application of:
HOCHHEISER, et al.
Application No.: 09/951,018
Filed: September 12, 2001
Atty's Docket No.: 0087-PC
Title: BLENDING OF RUBBER COMPOUNDS, FILLERS AND PLASTICIZERS

DECISION ON PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b) filed January 20, 2006 seeking to revive the above-entitled application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper and timely reply to the final Office action mailed May 11, 2004, which set a shortened statutory period for reply of three (3) months. Applicants filed a response to the Office action on November 10, 2004, accompanied by the fee for a three-month extension of time under the provisions of 37 CFR 1.136(a). However, as set forth in the Advisory Action mailed on November 26, 2004, the materials filed November 10, 2004 did not place the application in condition for allowance.

Also on November 10, 2004, applicants filed a Notice Of Appeal with respect to the Office action. Applicants did not, however, file a timely appeal brief, and no extensions of time were timely obtained under 37 CFR 1.136(a).[1] Accordingly, the date of abandonment is January 10, 2005, two months after the filing date of the Notice Of Appeal.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes: (1) the reply in the form of a Request For Continued Examination (RCE) and submission as required by 37 CFR 1.114; (2) the petition fee; and (3) the required statement of unintentional delay. Accordingly, the reply to the final Office action

[1] The present petition for revival was accompanied by payment of a $1,530 extension fee seeking to extend the due date for the Appeal Brief for four months. However, an extension of time under 37 CFR 1.136(a) must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats 1988). Since the $1,530 extension of time fee submitted with the present petition on January 20, 2006 was filed well after the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

(in the form of the RCE and the accompanying submission) is accepted as having been unintentionally delayed.

It is noted that the present petition was submitted by the above named attorney of record using a different address from the correspondence address of record set forth above. A courtesy copy of this decision will be forwarded to the address listed on the petition for revival; however, until submission of an acceptable Change Of Correspondence Address, all future communications with respect to this application will be mailed only to above-listed correspondence address of record.

The application file is being referred to Technology Center AU 1714.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3296.

Richard M. Ross
Attorney Advisor

cc: Daniel Reitenbach
Chemtura Corporation
199 Benson Road
Middlebury, CT 06749

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PO BOX 12195
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RESEARCH TRIANGLE PARK, NC 27709

Mail Date: 04/20/2010

Applicant	: Mitchell Adam Cohen	: DECISION ON REQUEST FOR
Patent Number	: 7627484	: RECALCULATION of PATENT
Issue Date	: 12/01/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/951,024	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/11/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1141** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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OFFICE OF PETITIONS

In re Application of :
Phillip Dan Cook et al :
Application No. 09/951,052 : DECISION ON PETITION
Filed: September 12, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. ISIS-4852 :

This is a decision on the petition, filed August 19, 2004, which is being treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed applications, set forth in the amendment submitted concurrently with the instant petition.

The petition under 37 CFR 1.78(a)(3) is **granted**.

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

PETITION UNDER 37 CFR 1.78(a)(3)

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

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
> **(2)** the surcharge set forth in § 1.17(t); and
> **(3)** a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on September 12, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed applications has been included in an

amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed applications was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. *See* 35 U.S.C. § 120. 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 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.

PETITION UNDER 37 CFR 1.183

Petitioner is also requesting waiver of the surcharge fee required by 37 CFR 1.17(t). Accordingly, the petition is being treated as a petition under 37 CFR 1.183 to waive the surcharge under 37 CFR 1.17(t).

37 CFR 1.183 states that:

> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, sua sponte, or on petition of the interested party, subject to such other requirements may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

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

The circumstances of this case do not demonstrate an extraordinary situation, much less one where justice requires waiver of the rules. The failure to timely submit the claim for foreign priority of the earlier application within the time period set forth in 37 CFR 1.78(a)(3) was a circumstance entirely within petitioner's control and could have been avoided by initially filing the claim for priority within the time period specified by the rule. Equitable powers should not be invoked to excuse the performance of a condition by a party that has not acted with reasonable, due care and diligence. U.S. v. Lockheed Petroleum Services, 709 F.2d 1472, 1475 (Fed. Cir. 1983). Furthermore, since the USPTO did not cause or contribute to petitioner's filing delay in claiming priority benefits to the prior-filed applications, this case is even further removed from consideration as one where "justice requires" equitable relief. See Helfgott & Karras, P.C. v. Dickinson, 209 F.3d 1328, 54 USPQ2d 1425 (Fed. Cir. 2000).

It is well settled that a party's inadvertent failure to comply with the requirements of the rules or procedures before the USPTO is not deemed to be an extraordinary situation that would warrant waiver of the rules or procedures under 37 CFR 1.183. *See* Honigsbaum v. Lehman, 903 F. Supp. 8, 37 USPQ2d 1799 (D.D.C. 1995) (Commissioner did not abuse his discretion in refusing to waive requirements of 37 CFR 1.10(c) in order to grant filing date to patent application, where applicant failed to produce "Express Mail" customer receipt or any other evidence that application was actually deposited with USPS as "Express Mail"), *aff'd without opinion*, 95 F.3d 1166 (Fed. Cir.1996); Nitto Chemical Industry. Co., Ltd. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (Commissioner's refusal to waive requirements of 37 CFR 1.10 in order to grant priority filing date to patent application not arbitrary and capricious, because failure to comply with the requirements of 37 CFR 1.10 is an "avoidable" oversight that could have been prevented by the exercise of ordinary care or diligence, and thus not an extraordinary situation under 37 CFR 1.183); Gustafson v. Strange, 227 USPQ 174 (Comm'r Pats. 1985) (Counsel's unawareness of 37 CFR 1.8 not extraordinary situation warranting waiver of a rule). Rather, as petitioner failed to comply with the provisions of 37 CFR 1.78(a)(3), this is not an "extraordinary situation" where "justice requires" an extraordinary remedy.

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

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

This application is being forwarded to the examiner of Technology Center Art Unit 1635 for appropriate action on the amendment filed August 19, 2004, including consideration of applicant's entitlement to claim benefit of priority to the prior-filed applications.

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

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application of	:
Enzo Paoletti et al	:
Serial No.: 09/951,061	: PETITION DECISION
Filed: September 13, 2001	:
Attorney Docket No.: 98-227-H	:

This is in response to applicants' informal petition contained in the text of a reply filed September 5, 2002, seeking entry of corrected domestic priority data..

BACKGROUND

A review of the file history shows that this application was filed on September 13, 2001 which is subsequent to November 29, 2000, the date of implementation of 37 CFR 1.78(a)(2 and 3) which state as follows:

> (2) Except for a continued prosecution application filed under § 1.53(d), **any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain a reference to each such prior application**, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. **This reference must be submitted 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. This time period is not extendable.** Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. If the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit for such application is claimed in the application data sheet). The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross references to other related applications may be made when appropriate (see § 1.14). Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and this paragraph is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application. The time period set forth in this paragraph does not apply to an application for a design patent.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2) 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 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 surcharge set forth in § 1.17(t); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(2) 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.

On September 5, 2002, applicants in reply to an Office action which commented on the priority claim presented filed an amended priority claim which added several applications to the chain of priority as well as deleting others. The reply included a request that the amendment be considered a petition, if necessary.

DISCUSSION

In order for a petition to be considered, it must be presented in a separate papers. In order for this type of petition to be granted it must meet the criteria set forth above in a clear manner. The petition cannot be properly considered as it is not on separate paper. Although a statement of failure to present a proper claim was unintentional, the statement does not satisfy the criteria above. Lastly, no petition fee has been paid or authorized to be charged to a Deposit Account.

DECISION

Applicants' petition is **DISMISSED** for the reasons set forth above.

This decision will be made part of the next Office action. The file will be forwarded to the examiner for further consideration.

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

John Doll
Director, Technology Center 1600

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Paper No. 18

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JUL 16 2003

OFFICE OF PETITIONS

In re Application of
Enzo Paoletti et al
Application No. 09/951,061
Filed: September 13, 2001
Attorney Docket No. 98-227-H

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed April 15, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

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

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

[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).

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed September 5, 2002 fails to state the relationship of the prior-filed applications to the instant application.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

In order to expedite consideration, petitioner may wish to submit the substitute amendment and a renewed petition by facsimile transmission to the number indicated below and to the attention of Karen Creasy **.**

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: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

By Fax: (703) 308-6916
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 22

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JUL 3 0 2003

OFFICE OF PETITIONS

In re Application of
Enzo Paoletti et al
Application No. 09/951,061
Filed: September 13, 2001
Attorney Docket No. 98-227-H

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

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed by facsimile transmission on July 23, 2003, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is again **DISMISSED**.

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

> **(1)** the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;[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 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.

[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).

The instant petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. An example of a proper benefit claim is: "This application is a continuation of Application No. 10/---, filed---." A benefit claim that merely states: "This application claims the benefit of Application No. 10/---, filed---," does not comply with 37 CFR 1.72(a)(2)(i) since the proper relationship, which includes the type of continuing application, is not stated. Also, the status of each nonprovisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent nonprovisional application. See Manual of Patent Examining Procedure, 8th ed., August 2001), Section 201.11, Reference to First Application. The amendment filed July 23, 2003 fails to state the relationship of Application No. 08/105,483, filed August 12, 1993 and Application No. 08/036,217, filed March 24, 1993 to the instant application. Additionally, the paragraph which reads " Mention is also made....," cannot be entered as written. It is presumed that there is no priority claim to these cases.

For the above-noted reason, the petition under 37 CFR 1.78(a)(3) cannot be granted.

In order to expedite consideration, petitioner may wish to submit the substitute amendment and a renewed petition by facsimile transmission to the number indicated below and to the attention of Karen Creasy .

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: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

By Fax: (703) 308-6916
ATTN: Office of Petitions

Any questions concerning this matter may be directed to Karen Creasy at (703) 305-8859.

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

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Paper No. 25

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OCT 2 8 2003

OFFICE OF PETITIONS

In re Application of
Enzo Paoletti et al
Application No. 09/951,061
Filed: September 13, 2001
Attorney Docket No. 98-227-H

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed by facsimile transmission on October 1, 2003, 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;[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 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 September 13, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional

---

[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).

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.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859.

This application is being forwarded to Technology Center Art Unit 1648 for 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
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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Paper No. 7

MARK FARBER
TYCO HEALTHCARE GROUP LP
150 GLOVER AVENUE
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NOV 0 8 2002

OFFICE OF PETITIONS

In re Application of :
Jonathan Martinek :
Application No. 09/951,069 : DECISION ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 2660 :

This is a decision on the petition filed February 27, 2002 (Certificate of Mailing dated February 11, 2002), to accord the above-identified application a filing date of September 13, 2001 with drawings of Figures 1 - 14 as part of the original disclosure.

Application papers in the above-identified application were filed on September 13, 2001. However, on October 10, 2001, the Initial Patent Examination Division mailed applicant a "Notice of Incomplete Nonprovisional Application", notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings. In response, applicant filed the instant petition.

Petitioner's argument that nine (9) sheets of drawings containing Figures 1-14 were filed on September 13, 2001 is not persuasive. The PTO file is the official record of papers originally filed in this application. A review of the official file reveals that no drawings were filed on September 13, 2001, since no such drawings are present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declarations relied on contain the declarant's recall of routine events which occurred more than five months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Nevertheless, as stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

> A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains method claims, namely claims 12-19. Therefore, the application should have been treated as an application filed without

all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In view of the above, the "Notice of Incomplete Nonprovisional Application" mailed October 10, 2001, was mailed in error and is hereby **withdrawn**.

Accordingly, the petition is **granted** to the extent that the application will be accorded the September 13, 2001 filing date with no drawings as a part of the original disclosure of the application.

An amendment canceling all references in the specification to the omitted drawings should be filed prior to the first Office action on the merits. The drawings filed February 27, 2002 will not be entered, but will remain in the application file.

As the present petition was due to USPTO error, the petition fee is unnecessary, and is being refunded to petitioner under separate cover. Additionally, petitioner should note that an extension of time is not appropriate when an application is incomplete. Therefore, this fee has been refunded to Deposit Account No. 50-2140.

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.

This application is being forwarded to the Office of Initial Patent Examination for further processing, including mailing of a filing receipt, with a filing date of September 13, 2001, using the application papers present on that date, and for indication on the file wrapper label that "0" sheets of drawings were present on filing. Applicant will receive appropriate notifications regarding any missing items or fees owed, and other information in due course from OIPE.

Telephone inquiries specific to this decision may 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

cc: Carter, DeLuca, Farrell & Schmidt LLP
445 Broad Hollow Road, Suite 225
Melville, New York 11747

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Paper No. 9

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FEB 05 2003

OFFICE OF PETITIONS

In re Application of	:	
Jonathan Martinek	:	
Application No. 09/951,069	:	DECISION GRANTING PETITION
Filed: 13 September, 2001	:	
Att'y Docket No. 2660	:	

This is a decision on the renewed petition styled under 37 CFR 1.10(e) filed on 27 November, 2002, which is treated as a petition filed under 37 CFR 1.53(e) requesting that the above-identified application be accorded a filing date of 13 September, 2001, with nine (9) sheets of drawings as a part of the original disclosure.

On 13 September, 2001, the application was filed.

On 10 October, 2001, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the application was deposited without drawings and that the filing date of the application would be the date of receipt of the drawings. A petition to accord a filing date was filed on 27 February, 2002. On 25 March, 2002, the petition was granted to the extent that the application was accorded a filing date of 13 September, 2001, without drawings as a part of the original disclosure.

Petitioner asserts that the application as filed included nine (9) sheets of drawings. In support, petitioner has now provided a copy of a return receipt postcard bearing an Office-date stamp of 09/13/01 and the above-identified application number and itemizing the filing of nine (9) sheets of "informal" drawings. It is noted that a copy of the nine (9) sheets of drawings was supplied with the petition filed on 27 February, 2003.

Petitioner requests that the application, including nine (9) sheets of drawings, be accorded a filing date of 13 September, 2001.

Upon review of the record, no sheets of drawings deposited on 13 September, 2001, have been located among the application papers. However, the evidence is convincing that the application papers deposited on 13 September, 2001, included nine (9) sheets of drawings, which were subsequently misplaced in the USPTO. Therefore, the application, including the nine (9) sheets of drawings, was complete on filing and entitled to a filing date of 13 September, 2001.

In view of the above, the petition is granted. The petition fee of $130.00 will be credited to counsel's deposit account, No. 50-2140.

The application will be processed with a filing date of 13 September, 2001, using the nine (9) sheets of drawings supplied on 27 February, 2002. The copies of the application papers supplied with the present renewed petition will not be processed or examined, but will be retained in the application file.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 13 September, 2001, using the application papers filed on 13 September, 2001, and the nine (9) sheets of drawings supplied on 27 February, 2002.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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PO BOX 37428
RALEIGH, NC 27627

COPY MAILED

MAR 12 2007

OFFICE OF PETITIONS

In re Application of:	:	
Zaki et al.	:	
Application No. 09/951090	:	DECISION DISMISSING
Filing or 371(c) Date 09/13/2001	:	PETITION UNDER
Title of Invention:	:	37 CFR 1.181(a)
METHODS OF DERESINATING	:	
CRUDE OILS USING CARBON	:	
DIOXIDE	:	

This is in response to a Request to Withdraw the Holding of Abandonment (37 C.F.R. §1.181), filed September 6, 2006[1].

This Petition is hereby **dismissed**.

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

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed January 13, 2003. The Office action set a three (3) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on April 14, 2003. A Notice of Abandonment was mailed October 8, 2003.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that a timely reply to the Office action was filed via facsimile on March 3, 2003. In support of this assertion, Applicant provides a copy of an Amendment which includes a Certificate of Transmission dated March 3, 2003, and executed by Susan E. Freedman. No statement from Ms. Freedman attesting to the transmission has been filed.

[1] Office records indicate receipt of an initial petition to withdraw the holding of abandonment on October 14, 2003.

Applicable Law, Rules and MPEP

37 CFR 1.8(b), Certificate of mailing or transmission, .The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, explains that

> (b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.
> (c) The Office may require additional evidence to determine if the correspondence was timely filed. (Emphasis supplied).

37 CFR 1.8(b)

Analysis and conclusion

Applicant has failed to comply with 37 CFR 1.8(b)(3). In this regard, a statement from Ms. Freedman, which attests on a personal knowledge basis, to the previous timely mailing or transmission, is required. The petition is dismissed without prejudice. Applicant should file a request for reconsideration of petition and include the necessary statement.

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

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

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

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

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

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APR 0 4 2007

OFFICE OF PETITIONS

In re Application of	:	
Zaki et al.	:	
Application No. 09/951090	:	DECISION ON
Filing or 371(c) Date: 09/13/2001	:	PETITION
Attorney Docket Number: 5051-527	:	

This is a decision in response to the Renewed Petition Under 37 CFR 1.181, filed March 23, 2007.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed January 13, 2003. The Office action set a three (3) month period for reply. No response having been received, the application became abandoned on April 14, 2003. A Notice of Abandonment was mailed October 8, 2003.

Applicant filed a petition to withdraw the holding of abandonment on September 6, 2006[1], asserting that a timely response to the Notice was filed. The petition was dismissed in a decision mailed March 12, 2007, for failing to comply with 37 CFR 1.8(b)(3), which requires a statement from a person with first hand knowledge of the previous mailing or transmission.

Applicant files the instant petition and includes the Declaration of Ms. Susan E. Freedman, attesting to the mailing of a reply to the Office action on March 3, 2003, under the provisions of 37 CFR 1.8.

In view of the above, the petition is granted. The application will be referred to Technology Center Art Unit 1764 for processing of the response, and for continued processing in due course.

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

Derek L. Woods
Attorney
Office of Petitions

[1] Office records indicate receipt of an initial petition to withdraw the holding of abandonment on October 14, 2003.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : August 8, 2005

TO SPE OF : ART UNIT 2655

S.N. 09/951093

SUBJECT : Request for Certificate of Correction on Patent No.: 6,901,364

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

Please complete this form and return with file, within **7** days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9309 ext. 116

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

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

Comments:

In the Certificate of Correction please change "Col. 10, line 29, claim 29" to read – Col. 10, line 39, claim 29 –.

Thank You!

SPE

2626
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Myers Bigel Sibley & Sajovec
P. O. Box 37428
Raleigh, NC 27627

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JUL 29 2002

OFFICE OF PETITIONS

In re Application of :
Saad A. Khan, et al. :
Application No. 09/951,099 : ON PETITION
Filed: September 11, 2001 :
Attorney Docket No. 5051.521 :

This is a decision on the petition under 37 CFR 1.137(b), filed June 24, 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 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 December 13, 2001.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#11

JAN - 6 2004

MYERS BIGEL SIBLEY & SAJOVEC
P.O. BOX 37428
RALEIGH, NC 27627

In re Application of	:
Khan et al.	:
Serial No.: 09/951099	:WITHDRAWAL OF ABANDONMENT
Filed: September 11, 2001	:
Attorney Docket No.: 5051.521	:

This is in response to applicant's petition under 37 CFR 1.181, filed October 14, 2003, requesting withdrawal of the holding of abandonment. The delay in acting on the petition is regretted.

BACKGROUND

A review of the file records shows that the Office mailed an Office Action on March 03, 2003 giving a One (1) month or Thirty (30) days for reply. On October 07, 2003 the Office mailed a Notice of Abandonment because no reply has been received. On October 14, 2003 applicant filed a petition requesting the withdrawal of holding of abandonment.

DISCUSSION

The file records and Petition have been considered carefully. The Petition states that applicants timely filed a Supplemental Response to the U.S. Patent and Trademark Office on March 25, 2003.

Applicants provided a faxed copy of the Supplemental Response including the stamp indicating a mail date of March 25, 2003, and a copy of the Return Postcard mailed with the applicants timely response, including the USPTO stamp indicating the date of receipt of March 31, 2003 showing that the response was timely filed.

DECISION

In review of the evidence of record it is clear that the Office abandoned the application erroneously. This Petition is GRANTED. The Holding of Abandonment has been withdrawn.

Should there be any questions with regard to this letter please contact Special Program Examiner Bruce Campell by letter addressed to the Director, Technology Center 1600, PO Box 1450, Alexandria VA 22313-1450, or by telephone at (703) 308-7553 or by facsimile transmission at (703) 308-7230.

JBurke for

John Doll
Director, Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 23

Dicke Billig & Czaja
Fifth Street Towers, Suite 2250
100 South Fifth Street
Minneapolis, MN 55402

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FEB 0 4 2004

OFFICE OF PETITIONS

In re Application of :
Winthrop[D. Childers et al. :
Application No. 09/951,114 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 10971936-8 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 22, 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 September 4, 2003, which set a shortened statutory period for reply of One-Month 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 December 5, 2003.

The application file is being forwarded to Technology Center AU 2863 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

BEST AVAILABLE COPY

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20090522

DATE : 5/18/09

TO SPE OF : ART UNIT 2863 Michael Nghiem

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/951114 Patent No.: 7008650

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

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

Certificates of Correction Branch

703-308-9390 ext. _____

Thank You For Your Assistance

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

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

Comments: _____

DREW A. DUNN
SUPERVISORY PATENT EXAMINER

Drew A. Dunn

SPE

2863 /MN/ 5-22-09
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

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AUG 2 9 2002

OFFICE OF PETITIONS

ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON MA 02110-2624

In re Application of
Croman et al.
Application No. 09/951124
Filed: September 12, 2001
Attorney Docket No. ARIM-P01-002

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition filed February 27, 2002, 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 September 12, 2001, without an executed oath or declaration. Accordingly, on October 16, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set an extendable two-month period for reply of December 16, 2001.

In reply, applicant filed a petition, the surcharge for late filing of the declaration, and a partially executed declaration. To make the reply timely, a two (2) month extension of time was also submitted. In support of the petition, applicants submitted a statement of facts, and employment agreement documents.

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 instant petition does not satisfy requirements (1) and (2).

As to item (1), Rule 47 applicant has failed to show that inventor Robert Rees was ever presented with a copy of the application papers. Before a refusal can be alleged, applicant must demonstrate a bona fide attempt was made to present a copy of application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor. See MPEP 409.03(d). Rule 47 applicant indicates on three occasions correspondence was sent to inventor Rees. However, in none of the information provided is there an indication application papers were mailed to inventor Rees. Inventor Rees must be presented with the opportunity to sign the application papers before rule 47

status will be granted.

As to item (2), the declaration submitted is not in compliance with 37 CFR 1.63 . Rule 47 applicant failed to provide the citizenship and mailing addresses of all of the inventors pursuant to 37 CFR 1.63 (a)(3)and (c)(1). Although rule 47 applicant supplied the last known address of inventor Rees in the statement of facts, the oath or declaration must include the mailing address of all inventors.

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

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

Paper 15

MICHAEL J. BEVILACGUA
HALE and DORR LLP
60 STATE STREET
BOSTON, MA 02109

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JUL 15 2004

OFFICE OF PETITIONS

In re Application of
Joe Croman, Christopher Anderson, Robert Rees, Seth Silverman, Yishai Sered and Mark Eichin

Application No. 09/951,124
Filed: September 12, 2001
Attorney Docket No. 111283.136US2

DECISION ON PETITIONS
37 CFR 1.137(b) AND 1.47(a)

This is a decision on the petitions filed under 37 CFR §1.137(b) and §1.47(a) on June 28, 2004.

The petition filed under 37 CFR 1.47 (a) is **Dismissed as Moot**.

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

Petition Under 37 CFR 1.47

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered to be 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 further consideration under 37 CFR 1.47(a).

Petition under 37 CFR 1.137(b)

The above-identified application was filed on September 12, 2001, without an executed oath or declaration. Accordingly, on October 16, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late

filing. This Notice set an extendable two-month period for reply of December 16, 2001. To make the reply timely, a two (2) month extension of time was also submitted. A petition filed under 37 CFR 1.47(a) was dismissed on August 29, 2002. An extendable two month reply period for a request of reconsideration of the dismissed petition expired on October 30, 2002. The application was held abandoned on October 31, 2002.

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

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

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 306-0251.

Charlema R. Grant

Charlema R. Grant
Petition Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 3/18/08

Paper No.: X

TO SPE OF : ART UNIT 2145

SUBJECT : Request for Certificate of Correction for Appl. No.: 9/951124 Patent No: 7325264B2

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

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

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

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

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

VIRGINIA TOLBERT
Certificates of Correction Branch
703-308-9390 ext. 113

Thank You For Your Assistance

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

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

Comments: ok

JASON CARDONE
SUPERVISORY PATENT EXAMINER
SPE

2145
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

SONIA K GUTERMAN ESQ
MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER
BOSTON, MA 02111

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JAN 0 2 2003

OFFICE OF PETITIONS

In re Application of	:	
Lawrence A. Bottomley et al	:	
Application No. 09/951,131	:	DECISION GRANTING PETITION
Filed: September 12, 2001	:	UNDER 37 CFR 1.137(f)
Attorney Docket No. 2506/128	:	

This is a decision on the petition, filed December 5, 2002, 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 September 11, 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 Corrected Filing Receipt which sets forth the projected publication date of April 10, 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 1641 for examination in due course.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 4

MAIL

NOV 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

In re Application Serial No.:

09/951,156

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES 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

#5

McDonnell Boehnen Hulbert & Berghoff
32nd Floor
300 S. Wacker Drive
Chicago IL 60606

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MAY 16 2003

OFFICE OF PETITIONS

In re Application of :
Anoop Tripathi et al :
Application No. 09/951,202 : DECISION GRANTING PETITION
Filed: September 13, 2001 : UNDER 37 CFR 1.137(f)
Attorney Docket No. 01-824 :

This is a decision on the petition, filed May 6, 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 September 10, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the 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 21, 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 2143 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

William W. Jones
6 Juniper Lane
Madison, CT 06443

MAILED

NOV 08 2005

Director's Office
Group 3700

In re Application of
BENNI, PAUL
Appl. No.: 09/951,221
Filed: September 14, 2001
For: LASER DIODE OPTICAL TRANSDUCER ASSEMBLY FOR NON-INVASIVE SPECTROPHOTOMETRIC BLOOD OXYGENATION MONITORING
Attorney Docket Number: H-1318 CIP

DECISION DISMISSING PETITION
37 CFR 1.181

This is a decision on petitioner's request filed March 7, 2005, requesting withdrawal of the holding of abandonment of the above-identified application because the applicant did not receive the Office communication mailed on July 23, 2004 at the correspondence address of record. The petition is considered pursuant to 37 CFR 1.181. No fee is required for this petition.

The petition is dismissed.

The showing required to establish nonreceipt 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; and (2) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See MPEP 711.03(c) IA.

The instant application does not comply with item (1 and 2) above. The docket history submitted with the petition appears to indicate that the Office Action dated July 23, 2004 was received and entered into the docket and that no response was mailed. It is unclear why petitioner has entered the paper that allegedly was not received into their docket history. The docket history should indicate that no papers were received during this time frame. The docket history also appears to be incomplete as the Notice of Abandonment (an office action) is not listed.

It should also be noted that the notice of non-compliance is correct. The amendment of April 14, 2004 only lists claims 18-20. However, claims 1-10 should be listed as cancelled and claims 11-16 are previously presented claims that should have the full text of the claims in the complete listing of claims. The revised amendment practice is mandatory for all amendments effective July 30, 2003. A copy of the revised amendment practice letter is attached to this decision.

Petitioners may file a renewed petition, without fee, addressing the points raised above. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Alternatively, petitioners may wish to consider filing a petition to revive under 37 CFR 1.137. The rules and MPEP sections cited may be found on the USPTO website at: www.uspto.gov.

Richard A. Bertsch, Director
Technology Center 3700

Attachment: Revised Amendment Practice

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WILLIAM W. JONES
6 JUNIPER LANE
MADISON CT 06443

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NOV 30 2005

OFFICE OF PETITIONS

In re Application of :
Paul Benni :
Application No. 09/951,221 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. H-1318 CIP :

This is a decision on the petition, filed November 17, 2005 under 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

A non-Final Office Action was mailed April 8, 2004. A response was due not later than July 8, 2004. A response in the form of an amendment was filed April 14, 2004. However, on July 23, 2004 the applicant was advised that the amendment filed was non-compliant under 37 CFR 1.121. The time for response was one month from the mailing of the July 23, 2004 Notice. The instant petition and this decision precede the mailing of the Notice of Abandonment.

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

(1) the required reply (unless previously filed), which may 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 supplemental amendment is submitted with the petition to revive.

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

This matter is being referred to Technology Center 3735 for processing of the amendment.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

LERNER AND GREENBERG, P.A.
Post Office Box 2480
Hollywood FL 33022-2480

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MAY 1 3 2002

OFFICE OF PETITIONS

In re Application of
Cappelani, Sell & Willer
Application No.: 09/951,239
Filed: September 12, 2001
Attorney Docket No.: MUH-10984
For: INTEGRATED CIRCUIT CONFIGURATION AND METHOD OF FABRICATING A DRAM STRUCTURE WITH BURIED BIT LINES OR TRENCH CAPACITORS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed February 7, 2002 (certificate of mailing date January 3, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 12, 2001 without an executed oath or declaration. Accordingly, on October 19, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on February 7, 2002 (certificate of mailing date January 3, 2002), petition for a one month extension of time and required fee, a declaration executed by 2 of 3 joint inventors, the surcharge, the petition fee, and the instant petition were filed. A declaration of facts of Dieter Kottmann, the person handling the case in Germany for a party in interest, accompanied the petition. Mr. Kottmann explains that he mailed a number of letters and a copy of the application as filed to the non-signing joint inventor , Annalisa Cappelani, at her last known address. The petition states that the correspondence was returned as undeliverable.

A grantable petition under 37 CFR 1.47(a) requires

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

This petition lacks item (1).

As to item (1), Applicants have failed to establish that the inventor cannot be located. Where

inability to find or reach a non-signing inventor is alleged, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a **diligent** effort was made to locate the nonsigning inventor.

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, any inquiries of German telephone directories, or any extant national or regional registry, telegrams, Internet searches, and documented inquiries of his last known employer etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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

E. Shirene Willis

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

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SEP 09 2002
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UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

LERNER AND GREENBERG, P.A.
Post Office Box 2480
Hollywood FL 33022-2480

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MAY 13 2002

OFFICE OF PETITIONS

In re Application of
Cappelani, Sell & Willer
Application No.: 09/951,239
Filed: September 12, 2001
Attorney Docket No.: MUH-10984
For: INTEGRATED CIRCUIT CONFIGURATION AND METHOD OF FABRICATING A DRAM STRUCTURE WITH BURIED BIT LINES OR TRENCH CAPACITORS

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed February 7, 2002 (certificate of mailing date January 3, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on September 12, 2001 without an executed oath or declaration. Accordingly, on October 19, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on February 7, 2002 (certificate of mailing date January 3, 2002), petition for a one month extension of time and required fee, a declaration executed by 2 of 3 joint inventors, the surcharge, the petition fee, and the instant petition were filed. A declaration of facts of Dieter Kottmann, the person handling the case in Germany for a party in interest, accompanied the petition. Mr. Kottmann explains that he mailed a number of letters and a copy of the application as filed to the non-signing joint inventor , Annalisa Cappelani, at her last known address. The petition states that the correspondence was returned as undeliverable.

A grantable petition under 37 CFR 1.47(a) requires

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

This petition lacks item (1).

As to item (1), Applicants have failed to establish that the inventor cannot be located. Where

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inability to find or reach a non-signing inventor is alleged, an affidavit or declaration of facts should be submitted that fully describes the exact facts which are relied on to establish that a **diligent** effort was made to locate the nonsigning inventor.

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, any inquiries of German telephone directories, or any extant national or regional registry, telegrams, Internet searches, and documented inquiries of his last known employer etc., that support a finding that the nonsigning inventor could not be found or reached should be made part of the affidavit or declaration. It is important that the affidavit or declaration contain statements of fact as opposed to conclusions.

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

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

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

E. Shirene Willis

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

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OFFICE OF PETITIONS

LERNER AND GREENBERG, P.A.
Post Office Box 2480
Hollywood FL 33022-2480

In re Application of
Cappelani, Sell & Willer
Application No.: 09/951,239
Filed: September 12, 2001
Attorney Docket No.: MUH-10984
For: INTEGRATED CIRCUIT CONFIGURATION AND METHOD OF FABRICATING A DRAM STRUCTURE WITH BURIED BIT LINES OR TRENCH CAPACITORS

DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(a) MOOT

Papers filed on September 9, 2002 (certificate of mailing date September 4, 2002) in reply to "Decision Refusing Status Under 37 CFR 1.47(a)" mailed on May 13, 2002, included a Declaration signed by the previously nonsigning inventor, Annalisa Cappelani, in compliance with 37 CFR 1.63.

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

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

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

E. Shirene Willis

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 7

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

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MAY 25 2004

OFFICE OF PETITIONS

In re Application of :
John William Smith, et al. :
Application No. 09/951,245 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 8244R :

This is a decision on the petition under 37 CFR 1.137(b), filed May 14, 2004, to revive the above-identified application.

The application became abandoned for failure to timely respond to a Notice to File Missing Parts (Notice) mailed November 5, 2001. The notice required an oath or declaration under 37 CFR 1.63 and the requisite surcharge. Since no extension of time under the provisions of 37 CFR 1.136(a) was obtained, the application became abandoned on January 6, 2002. A Notice of Abandonment was mailed on November 24, 2003. In response, on May 14, 2004, petitioner filed the present petition, a partially executed declaration and a petition under 37 CFR 1.47(a).

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

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (**2**) the petition fee required by 37 CFR 1.17(m); (**3**) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (**4**) a terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above in view of the deficiencies found in the partially signed declaration and the petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

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) as set forth above.

As to item (1), rule 47 applicants must demonstrate with documented evidence that the 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 Carlos Henrique Behrens was ever presented with a copy of the complete application papers for the instant nonprovisional application. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers. If the non-signing inventor was not presented with a copy of the application papers for the instant nonprovisional application, then he could not attest that he had "reviewed and understands the application papers" and could not execute the declaration which was requested for inventor Behrens to sign. Did joint inventor Behrens receive a copy of the application papers? 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 non-signing inventor for signature. Unless petitioner can show that a copy of the application papers was presented to the non-signing inventor or that the non-signing inventors refused to accept delivery of the papers or expressly stated that the application papers should not be sent, then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the non-signing inventors' 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. **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).

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. If the inventor orally refuses to join in the application, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. If, on the other hand, petitioner receives an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 petitioner that the 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 the omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

The above-identified application cannot be revived until a declaration under 37 CFR 1.63 is filed in response to the Notice of Missing Parts mailed April 5, 2001 **or** a grantable petition in compliance with 37 CFR 1.47(a) is submitted.

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. No further petition fee is required. However, the reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)", as well as the missing items noted above. Petitioner is advised that this is not a final agency decision.

In order to expedite consideration of the petition under 37 CFR 1.47(a), petitioner may wish to submit the renewed petition by facsimile transmission to the telephone number indicated below and to the attention of Sherry Brinkley.

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: 2011 South Clark Place
Crystal Plaza Two, Lobby
Room 1B03
Arlington, VA 22202

The centralized facsimile number is (703) 872-9306.

Any questions concerning this matter may be directed to the undersigned at (703) 305-9220.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy 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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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TEHCNICAL CENTER – BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

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OFFICE OF PETITIONS

In re Application of :
John William Smith, et al. :
Application No. 09/951,245 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 8244R :

This is a decision in response to the renewed petitions under 37 CFR 1.47(a) and 37 CFR 1.137(b) filed September 27, 2004. The petitions were initially dismissed in a decision mailed May 25, 2004.

The petition under 37 CFR 1.47(a) 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(a), 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.

In view of the above, the petition under 37 CFR 1.137(b) is **GRANTED**.

The application file is being returned to Initial Patent Examination Division for further processing.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries related to Initial Patent Examination Division processing should be directed to their hotline at (703) 308-1202.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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CARLOS H. BEHRENS
URB. AVILA COROMOT, RES.
LA MONTANA APTO PB-1D
ALTA FLORIDA
CARACAS 1050
VENEZUELA

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NOV 1 6 2004

OFFICE OF PETITIONS

In re Application of
John William Smith, Toan Trinh, Gayle Marie Frankenbach and Carlos Henrique Behrens
Application No. 09/951,245
Filed: September 13, 2001
For: FABRIC CARE ARTICLE AND METHOD FOR CONSERVING ENERGY

LETTER

Dear Mr. Behrens:

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) 272-3204. 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).

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/951,261	09/12/2001	Phillip Dolamore	7092-1	3571

7590 06/21/2002

Akerman, Senterfitt & Eidson, P.A.
Post Office Box 3188
West Palm Beach, FL 33402-3188

EXAMINER
PORTER, RACHEL L

ART UNIT	PAPER NUMBER
3626	

DATE MAILED: 06/21/2002

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

In re Application of: **DOLAMORE ET AL**	:	
Application No.: 09/951,261	:	**DECISION GRANTING**
Filed: September 12, 2001	:	**PETITION**
For: HEALTH CARE DEBT FINANCING SYSTEM AND METHOD	:	*37 CFR 1.48(a)*

This is a decision on the petition under 37 CFR 1.48, filed February 15, 2002.

In view of the papers filed February 15, 2002, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by the deletion of M. Austin Forman and the addition of Byron S. Baldwin, Jr..

The petition is granted.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

Joseph Thomas
Supervisory Patent Examiner,
Art Unit 3626,
Patent Examining Group 3600

Akerman, Senterfitt & Eidson, P.A.
Post Office Box 3188
West Palm Beach, FL 33402-3188

UNITED STATES PATENT AND TRADEMARK OFFICE

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

PAUL G. LUNN, ESQ.
ZYMOGENETICS, INC.
1201 EASTLAKE AVENUE EAST
SEATTLE, WA 98102

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DEC 0 1 2004

OFFICE OF PETITIONS

In re Application of :
Yasmin A. Chandrasekher et al :
Application No. 09/951,268 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 00-88 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 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 non-final Office action mailed October 3, 2003, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 4, 2003.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1,040 extension of time submitted with the petition on November 9, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

This matter is being referred to Technology Center AU 1646.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

UR

PAPER NO. 6

MAR 11 2003

In re Application of	:	
Burton Brooks	:	
Serial No: 09/951,287	:	PETITION UNDER
Filed: September 12, 2001	:	M.P.E.P. 708.02, IV
For: PROCESSES AND APPARATUS FOR QUANTITATIVELY CONVERTING UREA TO AMMONIA ON DEMAND	:	

This is in response to the petition filed February 18, 2003, requesting that the above-identified application be granted Special Status under Section 708.02, IV of the MPEP and 37 CFR 1.102(c).

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

The petition is **GRANTED.**

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

Marshall, Gerstein & Borun
6300 Sears Tower
233 South Wacker
Chicago, IL 60606-6357

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. 6

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK, NY 10154

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FEB 26 2002

OFFICE OF PETITIONS

In re Application of	:	
Washisu et al.	:	LETTER GRANTING
Application No. 09/951,297	:	FILING DATE
Filed: 11 September, 2001	:	
Attorney Docket No. 1232-4764	:	

This is a response to the paper styled "PETITION UNDER 37 CFR § 1.10(d)" filed on 20 November, 2001, which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of 11 September, 2001, rather than the presently accorded filing date of 13 September, 2001.

The USPTO is aware that as a result of the events in New York City on 11 September, 2001, all post offices in the borough of Manhattan were closed on 12 September, 2001. The Commissioner has designated the interruption in the service of the United States Postal Service (USPS) in the borough of Manhattan as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The submission filed on 20 November, 2001, states that the application was deposited in Express Mail service on 11 September, 2001, and, but for the designated interruption in the USPS, would have been accorded that date as the "date-in." Under 37 CFR 1.10(a), correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Based on the submission filed on 20 November, 2001, it is concluded that the present application would have been filed on 11 September, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of 11 September, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 11 September, 2001.

Telephone inquiries specific to this matter 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

Paper No. 4

MORGAN & FINNEGAN, L.L.P.
345 PARK AVENUE
NEW YORK, NY 10154

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DEC 0 3 2001

OFFICE OF PETITIONS

In re Application of :
Katsura et al. :
Application No. 09/951,304 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 1232-4766 :

This is a decision on the petition filed November 20, 2001, to accord the above-identified application a filing date of September 11, 2001, instead of September 13, 2001.

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 1.10." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

37 CFR 1.10(d) 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 the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As to (3), the evidence is not corroborated by evidence from the USPS or that came into being within one business day after deposit.

MPEP 513 states, "While the Office strongly urges direct deposit of 'Express Mail' correspondence in order to obtain a legible copy of the 'Express Mail' mailing label, parties are not precluded from using 'Express Mail' drop boxes, but do so at their own risk."

Petitioner must prove that the correspondence was deposited prior to the last pickup time on September 11, 2001. The Office will consider evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS. Evidence from the USPS may be an Express Mail Corporate Account Mailing Statement. Evidence that came into being within one business day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the Express Mail number; the application number, attorney docket number or other such file identification number; the place of deposit; date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. The instant petition is not accompanied by evidence from the USPS or that came into being within one business day of deposit.

Petitioner cites the "Notification Related to Events of September 11, 2001." Petitioner should note that the Notification states in part,

> **Where mail is put into an Express Mail "Drop Box" and given an incorrect "date in".**
>
> . . . [The] petition must be corroborated either by evidence from the USPS or by evidence that came into being after deposit and within one business day of the deposit fo the correspondence in the Express Mail drop box.

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

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

If a request for reconsideration is not filed within two months, the file will be forwarded to the Office of Initial Patent Examination for further processing. Petitioner is reminded that a Notice of Missing Parts was mailed on October 16, 2001, requiring an oath/declaration and surcharge.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 4

MORGAN & FINNEGAN, L.L.P.
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NEW YORK, NY 10154

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OFFICE OF PETITIONS

In re Application of :
Katsura et al. :
Application No. 09/951,304 : LETTER
Filed: September 13, 2001 :
Attorney Docket No. 1232-4766 :

This is a response to the paper filed November 20, 2001, which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of September 11, 2001, rather than the presently accorded filing date of September 13, 2001. The decision mailed December 3, 2001, is hereby vacated.

The USPTO is aware that as a result of the events in New York City on September 11, 2001, all post offices in the borough of Manhattan were closed on September 12, 2001. The Commissioner has designated the interruption in the service of the United States Postal Service (USPS) in the borough of Manhattan as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The submission filed November 20, 2001, states that the application was deposited in Express Mail service on September 11, 2001, and, but for the designated interruption in the USPS, would have been accorded that date as the "date-in." Under 37 CFR 1.10(a), correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Based on the submission filed November 20, 2001, it is concluded that the present application would have been filed on September 11, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of September 11, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 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

Commissioner for Patents
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www.uspto.gov
DIW 12-01

Paper No. 4

MORGAN & FINNEGAN, L.L.P.
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NEW YORK, NY 10154

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DEC 1 4 2001

OFFICE OF PETITIONS

In re Application of	:	
Tsuboi et al.	:	
Application No. 09/951,305	:	DECISION DISMISSING
Filed: 13 September, 2001	:	PETITION
Attorney Docket No. 1232-4765	:	

This is a decision on the petition filed on 20 November, 2001, requesting that the above-identified application be accorded a filing date of 11 September, 2001, instead of the presently accorded filing date of 13 September, 2001.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on 11 September, 2001, pursuant to the requirements of 37 CFR 1.10. Petitioners assert that the application was deposited in a USPS Express Mail drop box in Manhattan at 5:30 PM on 11 September, 2001. The regularly scheduled last pickup for that drop box, assert petitioners, was 7:00 PM. Due to the events of 11 September, 2001, however, petitioners continue, the USPS did not process Express Mail until 13 September, 2001. In support, petitioners supplied, *inter alia*, a copy of a computerized docket showing that postage for mailing the application papers by Express Mail was prepared and paid on 11 September, 2001. The report show that postage was paid for an item with docket number 01232-4765, which is counsel's docket number for the present application, on 11 September, 2001. The petition is also accompanied by a copy of Express Mail label No. EL912004021US, the same Express Mail number found on an itemized "Express Mail Certificate" accompanying the original application papers received on 13 September, 2001. The Express Mail label bears a "date-in" of 13 September, 2001.

Paragraph (a) of 37 CFR 1.10 states that:

> 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.[1] (emphasis added)

Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
> (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

---

[1] See 37 CFR 1.6(a).

The petition lacks the showing required by item (3) above. The instant petition is not supported by corroborating evidence that came into being after deposit and within one business day of deposit of the application in Express Mail service.[2] Rather the records presented by petitioners show merely that petitioners' counsel weighed the application package and entered the cost of postage in counsel's records **prior** to placing the applications in the Express Mail drop box. Obviously, if the application was deposited in a drop box, the USPS would not provide a receipt showing that the postage was paid on 11 September, 2001, if, as petitioners assert, the USPS did not process the mailing on that date. Additionally, the postcard receipt was created prior to the date and time at which the application was deposited in Express Mail. Petitioners have presented no evidence that came into being after deposit and within one business date of deposit. Petitioner must establish, by official documentation from the USPS or evidence that came into being after deposit and within one business day of deposit, that the application was deposited in an Express Mail drop box prior to the last scheduled pickup on 11 September, 2001.

Petitioner should also note that while the requirement of 37 CFR 1.10(d) for a certificate of mailing by "Express Mail" has been waived by the Commissioner,[3] the other requirements of 37 CFR 1.10(d), including the requirement that the correspondence must have the number of the Express Mail mailing label placed thereon prior to mailing, have not been waived. In accordance with 37 CFR 1.10(d)(3), the Express Mail certificate of mailing may not serve as evidence of timely mailing because it was created prior to the deposit of the application in Express Mail.

Accordingly, the petition is dismissed.

The application is being returned to Office of Initial Patent Examination for further processing with the presently accorded filing date of 13 September, 2001.

---

[2] 37 CFR 1.10(d)(3).

[3] See 1174 O.G. Pat. Of. 92 (May 16, 1995).

Telephone inquiries may be directed to the undersigned at 703-308-6918.

Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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DIW 02-02

Paper No. 6

MORGAN & FINNEGAN, L.L.P.
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FEB 26 2002

OFFICE OF PETITIONS

In re Application of	:	
Tsuboi et al.	:	LETTER GRANTING
Application No. 09/951,305	:	FILING DATE
Filed: 11 September, 2001	:	
Attorney Docket No. 1232-4765	:	

This is a response to the paper styled "REQUEST FOR RECONSIDERATION OF THE PETITION FILED UNDER 37 CFR § 1.10(d)" filed by facsimile on 14 February, 2002, which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of 11 September, 2001, rather than the presently accorded filing date of 13 September, 2001.

The USPTO is aware that as a result of the events in New York City on 11 September, 2001, all post offices in the borough of Manhattan were closed on 12 September, 2001. The Commissioner has designated the interruption in the service of the United States Postal Service (USPS) in the borough of Manhattan as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The submission filed on 14 February, 2002, states that the application was deposited in Express Mail service on 11 September, 2001, and, but for the designated interruption in the USPS, would have been accorded that date as the "date-in." Under 37 CFR 1.10(a), correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Based on the submission filed on 14 February, 2002, it is concluded that the present application would have been filed on 11 September, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of 11 September, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of 11 September, 2001.

Telephone inquiries specific to this matter 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

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 27 2003

Paper No. 7

In re Application of :
Douglas D. Potter : DECISION ON PETITION
Application No. 09/951,321 :
Filed: September 11, 2001 :
Attorney Docket No. S0595.0070/P070

This is a decision on the petition filed on December 12, 2001 by which petitioner has requested that the above captioned application be accorded special status for advanced examination out of turn. The $130.00 petition fee has been received.

The petition is granted.

Petitioner requests special status based upon the practice established at MPEP 708.02(II), Infringement. A review of the petition shows that petitioner has clearly met the requirements for a showing in support of a petition to make special based upon the existence of an infringing device.

Accordingly, the examiner will treat this application as special throughout its prosecution. Prior to the first action on the merits, the examiner will conduct a rigorous search for potentially interfering applications. The interference search will be brought up to date prior to each successive action.

The application is being forwarded to the Supervisory Patent Examiner of Patent Examining Art Unit 3713 who, upon assignment and docketing of this application and after entry of the Information Disclosure Statement and any other papers filed concurrently with the instant petition, will forward the application to the examiner for action consistent with this Decision.

PETITION GRANTED.

Stephen Marcus, Special Program Examiner
Patent Examining Groups 3710 and 3720

OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8403

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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STEVEN I. WEISBURD
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1177 AVENUE OF THE AMERICAS
41st FLOOR
NEW YORK NY 10036-2714

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JUN 21 2007

OFFICE OF PETITIONS

In re Application of	:	
Potter	:	
Application No. 09/951,321	:	DECISION ON PETITION
Filed: September 13, 2001	:	
Docket No.: P/595-70	:	

This is a decision on the petition under 37 CFR 1.181, filed March 7, 2007, to withdraw the holding of abandonment.

The application was held abandoned following the decision of the Board mailed December 13, 2006. Notice of Abandonment was mailed February 27, 2007.

Petitioner asserts that a response to the Board decision was timely filed via USPS Express mail on February 13, 2007.

The original response submitted via USPS Express Mail on February 13, 2007 has been located, and, was thus timely submitted.

In view of the evidence thereof, the petition to withdraw the holding of abandonment is hereby **GRANTED**.

The Notice of Abandonment is hereby **VACATED** and the holding of abandonment is **WITHDRAWN**.

The application file is being forwarded to the Board further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 6

SKJERVEN MORRILL LLP
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SUITE 700
SAN JOSE CA 95110

MAILED
FEB 19 2003
Technology Center 2600

In re Application Serial No.:
09/951,325

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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STEPHEN E. CLARK
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427 WEST 35TH STREET
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OFFICE OF PETITIONS

In re Application of
Clark D. Boyd
Application No. 09/951,326
Filed: September 11, 2001
Attorney Docket No. SVC059

ON PETITION

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

The application became abandoned for failure to pay the issue fee on or before October 8, 2003. A Notice of Abandonment was mailed March 24, 2004. In response, on September 27, 2004, the requisite issue fee and the present petition were filed.

The petition is GRANTED.

The application is being referred to Publishing Division.

Telephone inquires related to this decision should be directed to the undersigned at (571) 272-3204. Telephone inquiries 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
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Paper No. 9

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MAILED

FEB 1 9 2003

Technology Center 2600

In re Application Serial No.:

09/951,329

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 8

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FEB 1 9 2003

Technology Center 2600

In re Application Serial No.:

09/951,331

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Krista Zele
Special Program Examiner
Technology Center 2600
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 10

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FEB 1 8 2003

Technology Center 2600

In re Application Serial No.:

09/951,332

ON REQUEST TO
WITHDRAW AS ATTORNEY

It is noted that a first petition filed October 31, 2002 has an improper Correspondence Address, therefore the first petition is dismissed in favor of the second petition filed December 24, 2002 which has been provided with the proper new Correspondence Address.

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

Krista Zele
Special Program Examiner
Technology Center 2600
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cc: Alan MacPherson
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 9

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BEST AVAILABLE COPY

In re Application Serial No.:
09/951,333

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAY 18 2006

OFFICE OF PETITIONS

Finnegan, Henderson, Farabow, Garrett, Dunner
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Washington DC 20001-4413

In re Application of
Honjo et al.
Application No. 09/951,379
Patent No. 6,989,915
Filed: September 14, 2001
Attorney Docket No. 04329.2644

: DECISION GRANTING LETTER

This decision is in response to Applicants' "NOTICE OF ERR0R IN THE DETERMINATION OF PATENT TERM ADJUSTMENT" filed on February 10, 2006 requesting that the Office review the determination of PTA at the time of the issuance of the patent in light of the PALM record that does not enter the acknowledgment of IDS or submission of IDS after the mail date of the notice of allowance.

Applicants' letter regarding PTA determination is **GRANTED.** The Office will adjust the PTA calculation at the time of the mailing of the issuance of the patent reflect this decision. The Office will also *sua sponte* issue a certificate of correction reflecting this decision.

Applicants assert that the Office should review the PTA determination in light of the IDS submission and acknowledgment after the mailing of the notice of allowance.

A review of the file reflects that applicants letter is correct. The Office failed to enter the submission of an IDS on June 30, 2005 or the request for acknowledgment of the IDS after the mail date of the notice of allowance into the PALM record and accordingly the PTA determination did not take such papers into consideration for PTA purposes. The record reflects that applicants did submit a request for IDS acknowledgment on April 12, 2005 for the submission of IDS on December 2001. In addition, applicants submitted an IDS disclosure on June 30, 2005. As for the request for acknowledgment of IDS disclosure on 4/12/2005, is not considered a failure to engage in reasonable efforts to conclude prosecution of the application because applicants would not have had an opportunity prior to notice of allowance to have such issue addressed. The first action within the meaning of 35 U.S.C. 132 was the notice of allowance.
As for the submission of the IDS after the notice of allowance, the IDS submission is considered a reduction under 37 CFR 1.704(c)(10). Accordingly, the reduction will begin on June 30, 2005 and end on August 5, 2005, a thirty-seven day reduction.[1] Accordingly, the correct amount of

[1]The Office does not see any statement that would qualify as a waiver of the reduction under 37 CFR 1.704(d). Thus, a reduction under 37 CFR 1.704(c)(10) is proper.

PTA at the time of the issuance of the patent is NINE HUNDRED AND EIGHTEEN DAYS (955-37=918).

After the mailing of this decision, the Office will forward this patented file to the certificate of correction branch of the USPTO for a issuance a certificate of correction. Applicants are given thirty (30) days to respond to this decision. No extensions of time will be granted. After the thirty day period , the Office will *sua sponte* issue a certificate of correction reflecting this decision.

Because applicants out of good faith and candor are providing a notice to the Office of a determination that too much PTA may have been granted, the Office will not assess a fee.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.

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

cc: adjusted Pair calculation
Draft C of C

Day : Wednesday

PALM INTRANET

Date: 5/17/2006
Time: 12:10:57

PTA Calculations for Application: 09/951379			
Application Filing Date:	09/14/2001	PTO Delay (PTO):	955
Issue Date of Patent:	01/24/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	0
Post-Issue Petitions:	0	Total PTA (days):	918
PTO Delay Adjustment:	-37		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
36	05/17/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		37	
31.5	01/04/2006	PTA 36 MONTHS			
31	01/24/2006	PATENT ISSUE DATE USED IN PTA CALCULATION	86		27
30	12/30/2005	RECEIPT INTO PUBS			
29	12/30/2005	DISPATCH TO FDC			
28	12/30/2005	APPLICATION IS CONSIDERED READY FOR ISSUE			
27	06/30/2005	ISSUE FEE PAYMENT VERIFIED			
26	12/20/2005	RECEIPT INTO PUBS			
25	11/21/2005	WORKFLOW - QUERY REQUEST - FINISH			
24	08/05/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
23	07/27/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
22	06/30/2005	ISSUE FEE PAYMENT RECEIVED			
21	06/29/2005	WORKFLOW - QUERY REQUEST - BEGIN			
20	05/04/2005	WORKFLOW - FILE SENT TO CONTRACTOR			
19	04/08/2005	EXPORT TO INITIAL DATA CAPTURE			
18	04/08/2005	CORRESPONDENCE ADDRESS CHANGE			
17	04/01/2005	MAIL NOTICE OF ALLOWANCE	869		-1
16	03/25/2005	ISSUE REVISION COMPLETED			
15	03/25/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
14	03/25/2005	CASE DOCKETED TO EXAMINER IN GAU			
13	03/21/2005	NOTICE OF ALLOWABILITY			
12	10/05/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			

11	12/13/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	04/12/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	03/05/2002	CASE DOCKETED TO EXAMINER IN GAU			
8	12/14/2001	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
7	12/14/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	12/28/2001	APPLICATION DISPATCHED FROM OIPE			
5	12/21/2001	APPLICATION IS NOW COMPLETE			
4	10/16/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	10/16/2001	CORRESPONDENCE ADDRESS CHANGE			
2	09/20/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/14/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back use Back button on your browser toolbar.

Back to PALM | ASSIGNMENT | OASIS | Home page

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,989,915 B2
DATED	:	January 24, 2006
INVENTOR(S)	:	Honjo 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 (955) days

Delete the phrase "by 955 days" and insert – by 918 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

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www.uspto.gov
DIW Jan-07

LAWRENCE I. WECHSLER
ONE WOOLEYS LANE
GREAT NECK NY 11021

COPY MAILED

JAN 0 9 2007

OFFICE OF PETITIONS

In re Application of	:	
Lawrence I. Wechsler	:	DECISION ON PETITION TO
Application No. 09/951383	:	WITHDRAW HOLDING OF
Filed: 09/13/2001	:	ABANDONMENT
Attorney Docket No. W1000-9	:	

This is a decision on the "PETITION REQUESTING WITHDRAWAL OF HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)" filed on 10 October, 2006.

The petition is **GRANTED**.

A review of the record reveals that a final Office action was mailed on 30 December, 2005, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 4 August, 2006.

On 10 October, 2006 (certificate of mailing date 4 October, 2006), the present petition was filed. Petitioner asserts that a timely and proper reply to the final Office action, including a Request for Continued Examination (RCE), a submission under 37 CFR 1.114, and an extension of time, were timely filed. In support, petitioners have supplied a copy of an RCE Transmittal Letter, a petition for an extension of time and payment for a one (1) extension of time, and an amendment under 37 CFR 1.116. Each of the above-identified papers bears a Certificate of Mailing or Transmission dated 28 April, 2006, stating that the correspondence was deposited in first class mail, and signed by applicant Lawrence I. Wechsler. The petition, signed by applicant, *pro se*, includes a statement that applicant mailed the

RCE request, amendment under 37 CFR 1.116, and extension of time on 28 April, 2006.

As petitioners have provided convincing evidence that an RCE and submission and one (1) month extension of time were transmitted to the USPTO on 28 April, 2006, the showing of record is that a response was timely filed, and there is no abandonment in fact. Any inconvenience caused to applicant is regretted.

The application is being referred to Technology Center Art Unit 3643 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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SHAPIRO COHEN
P.O. BOX 3440
STATION D
OTTAWA ON K1P6P-1 CA CANADA

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JUN 23 2006

OFFICE OF PETITIONS

In re Application of	:	
Eglington, Thor	:	DECISION ON PETITION
Application No. 09/951,448	:	TO WITHDRAW
Filed: September 14, 2001	:	FROM RECORD
Attorney Docket No. 1564-2	:	

This is a decision on the request to withdraw as attorney of record under 37 C.F.R. § 1.36, filed April 7, 2006.

The request is **NOT APPROVED.**

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 another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The Office cannot approve the request at this time since the reason provided do not meet any of the conditions under the mandatory or permissive categories enumerated in 37 CFR 10.40. Section 10.40 of Title 37 of the Code of Federal Regulation states, "[a] practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office[.]" More specifically, 37 CFR 10.40 states, "[i]f paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matter pending before the Office unless such request or such withdrawal is" for one the permissive reasons listed in 37 CFR 10.40(c). The reason set forth in the request, no longer representing the applicant, do not meet any the conditions set forth in 37 CFR 10.40.

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

Telephone inquires concerning this decision should be directed to Petitions Examiner Liana Chase at 571-272-3206.

David Bucci
Petitions Examiner
Office of Petitions

Cc:

THOR EGLINTON
C/O MEDEVIDENCE LTD.
105 FRANK STREET
OTTAWA, ON K2P 0X3
CANADA

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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SHAPIRO COHEN
P.O. BOX 3440
STATION D
OTTAWA ON K1P6P-1 CA CANADA

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JAN 12 2007

OFFICE OF PETITIONS

In re Application of	:	
Eglington, Thor	:	DECISION ON PETITION
Application No. 09/951,448	:	TO WITHDRAW
Filed: September 14, 2001	:	FROM RECORD
Attorney Docket No. 1564-2	:	

This is a decision on the renewed Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed August 18, 2006.

The request is **APPROVED**.

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

The request was signed by Dennis S. K. Leung on behalf of all attorneys of record who are associated with Customer Number 20779. All attorneys/agents associated with Customer Number 20779 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Thor Eglington at the address indicated below.

The application became abandoned for failure to timely reply to the Office action mailed March 6, 2006.

Telephone inquires concerning *this decision* should be directed to the undersigned at (571) 272-3206. All other inquires concerning either the examination or status of the application should be directed to the Technology Center.

Liana Walsh
Petitions Examiner
Office of Petitions

Cc:

THOR EGLINGTON
C/O MEDEVIDENCE LTD.
105 FRANK STREET
OTTAWA, ON K2P 0X3
CANADA

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/951,469

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 8

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FEB 1 8 2003

Technology Center 2600

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

In re Application Serial No.:
09/951,469

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, DC 20231
www.uspto.gov

Paper No. 5

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/951,475

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 8

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

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MAR 2 0 2003

Technology Center 2600

In re Application Serial No.:

09/951,475

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed December 24, 2002 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

Paper No.18

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NOV 04 2004

Director's Office
Office of Patent Publication

DAVIS & KENDALL, PC
188 WEST RANDOLPH, SUITE 626
CHICAGO, IL 60601

In re Application of :
Robert Brown :
Application No. 09/951,496 : DECISION ON PETITION
Filed: September 13, 2001 :

This is a decision on the Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181(a), received in the United States Patent and Trademark Office (USPTO) via facsimile transmission on October 29, 2004.

The petition is **DISMISSED.** Any request for reconsideration of this decision, **or** as explained below, filing a petition seeking revival under 37 CFR § 1.137, must be filed within TWO MONTHS (2) from the mail date of this decision.

The application was held abandoned for failure to timely file new formal drawings as required in the Notice of Allowability.. The Notice of Abandonment was mailed on October 13, 2004.

An investigation of the application file reveals that on June 21, 2004 the Office mailed the Notice Regarding Drawings (Notice) and attached PTO-948, Notice of Draftsperson's Patent Drawing Review. The Notice indicated that the corrected drawings received on March 13, 2001 were not acceptable. The PTO-948 indicated that the drawings were objected and noted the required corrections. The Applicant was given a two-month time period to correct the informalities

Since the USPTO has no record of response to the Notice Regarding Drawing, the application was properly abandoned.

Further investigation reveals that the date indicated as March 13, 2001 was incorrect. Reference should have been made to the drawings received April 28, 2003. Also, the Office mailed the Notice To File Corrected Application Papers on April 15, 2004. By operation of law, at twelve o'clock (Midnight) April 15, 2004, the application was abandoned for failure to respond to this Office action although a Notice of Abandonment was not mailed.

Applicant, is advised, that where a requirement is made and no petition is filed within the period set forth in 37 CFR §1.181(f) traversing the requirement—in this situation for formal drawings— petitioner is assumed to have acquiesced to the requirement. Therefore, this application became abandoned for failure to timely file corrected formal drawings or to file a grantable petition traversing the requirement for formal drawings.

Again, the record fails to disclose that the petitioner responded in any manner to the Notice's, either by submitting formal drawings or filing a petition traversing the requirement. Accordingly, this application is properly abandoned for failure to respond.

Although this petition for withdrawal of the holding of abandonment is being dismissed, further petition remedies are available for bringing about the withdrawal of the holding of abandonment.

File a petition for Revival of Abandoned Application or Lapsed Patent under CFR § 1.137 (a) or (b). Forms are available at USPTO website http://www.uspto.gov

■ Under 37 CFR 1.137(a), a petition for the revival of an ***unavoidably*** abandoned application must be accompanied by the following:

(1) The required reply to the outstanding Office action or notice, unless previously filed;
(2) The petition fee set forth in § 1.17(l);
(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable: and
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

■ Under 37 CFR 1.137(b), a petition for the revival of an ***unintentionally*** abandoned application must be accompanied by the following:

(1) The required reply 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 Director may require additional information where there is a question whether the delay was unintentional;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d) required pursuant to paragraph (c) of this section.

Further correspondence with respect to filing the petition under 37 CFR 1.137 should be addressed as follows:

By mail:	Commissioner For Patents P O Box 1450 Mail Stop Petitions Alexandria, VA 22313-1450
By telephone	Office of Petition 703-305-9282 or 9285

Telephone inquires relating to this decision may be directed to the undersigned in the Office of Patent Publication at 703-305-8380.

Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publication

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WAGNER LAW, LLC
3-5 VOSE AVENUE
SOUTH ORANGE NJ 07079

MAILED

JUL 09 2010

OFFICE OF PETITIONS

In re Application of	:	
Brown, Robert	:	
Application No. 09/951,496	:	DECISION ON PETITION
Filed: September 13, 2001	:	
Attorney Docket No. Brown 104-001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed April 5, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of Corrected Formal Drawings, (2) the petition fee of $810.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3206.

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

Liana Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

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SEP 05 2006

OFFICE OF PETITIONS

In re Application of :
Kaku : DECISION ON APPLICATION
Application No. 09/951,524 : FOR PATENT TERM ADJUSTMENT
Filed: September 14, 2001 :
Atty. Dkt. No: 011195 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)" filed June 16, 2006.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, mailed April 5, 2006, indicated that the PTA to date is 454 days. The instant application for patent term adjustment was timely filed June 16, 2006. Applicant argues the application is entitled to an additional adjustment of 217 days and an overall adjustment of 671 days.

At the time of allowance, an overall adjustment of 454 days could be attributed to the Office.

The adjustment under 37 CFR 1.702(a)(1) and 1.703(a)(1) totaling 230 days began November 15, 2002, the day after the date that is 14 months after the date the application was filed, and ended July 2, 2003, the date the Notice of Allowance was mailed.

Applicant argues that the period of adjustment under 37 CFR 1.702(a)(1) and 1.703(a)(1) is 447 days, having commenced November 15, 2002 and ended February 4, 2004, the date the "Corrected Notice of Allowance" was mailed, further arguing that the initial Notice of Allowance was "not correctly mailed by the USPTO."

Applicant's argument has been considered but found unconvincing. A review of the application history reveals that the Notice of Allowance mailed July 2, 2003 was properly mailed to the correspondence address of record at the time of mailing.

Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office, and it cannot be found that the Notice of Allowance was "not correctly mailed." The Notice of Allowance, having been returned to the USPTO by the United States Postal Service for reasons unknown to the USPTO, was re-mailed to applicant as a courtesy. The mere re-mailing of the Notice of Allowance, or "Corrected Notice of Allowance," on February 4, 2004 does not negate the fact that the Notice of Allowance mailed July 2, 2003 was properly mailed within the meaning of 35 USC 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1).

A further adjustment of 224 days under 37 CFR 1.702(a)(2) and 1.703(a)(2) can be attributed to the Office.

In view thereof, as of the time of allowance, the application is entitled to an adjustment 454 days for Office delays, as indicated in the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application mailed April 5, 2006.

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).

Receipt is hereby acknowledged of the required $200.00 patent term adjustment application fee.

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

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

Kery A. Fries

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

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OFFICE OF PETITIONS

In re Patent No. 7,123,554 :
Issued: October 17, 2006 : DECISION ON APPLICATION
Application No. 09/951,524 : FOR PATENT TERM ADJUSTMENT
Filed: September 14, 2001 :
Atty. Dkt. No: 011195 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION DISMISSING APPLICATION FOR PATENT TERM ADJUSTMENT," filed October 12, 2006.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,123,554 on October 17, 2007. The patent issue with an adjustment of 350 days. The request for reconsideration of decision on PTA argues that the adjustment under 37 CFR 1.702(a)(1) was miscalculated.

At the time of issuance, the patent was entitled to an adjustment of 350 days.

Patentees dispute the adjustment of 230 days attributed to the Office under 37 CFR 1. 702(a)(1) and 1.703(a)(1). The adjustment began November 15, 2002, the day after the date that is 14 months after the date the application was filed, and ended July 2, 2003, the date the Notice of Allowance was mailed.

Patentees argue that the period of adjustment under 37 CFR 1.702(a)(1) commenced November 15, 2002 and ended February 4, 2004, the date the "Corrected Notice of Allowance" was mailed, further arguing that the initial Notice of Allowance was "not correctly mailed by the USPTO."

Applicants' arguments has been considered but found unconvincing. The Notice of Allowance mailed July 2, 2003 was properly mailed to the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United

States Patent and Trademark Office. The Notice of Allowance was returned to the USPTO by the United States Postal Service for unknown reasons. The Notice was re-mailed as a courtesy in keeping with the procedures set forth at MPEP 1303.02.

The mere re-mailing of the Notice of Allowance, or "Corrected Notice of Allowance," on February 4, 2004 does not negate the fact that the Notice of Allowance mailed July 2, 2003 was properly mailed within the meaning of 35 USC 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1).

As to patentees' argument that had the Notice of Allowance been properly mailed a Notice of Abandonment would have issued, in view of the procedures set forth at MPEP 1303.02, rather than issue a Notice of Abandonment in response to the return of a Notice of Allowance, the Notice of Allowance was re-mailed.

As to patentees' comments that the USPTO fails to explain why the Notice of Allowance was not re-mailed for nearly seven months, patentees are advised that the procedures at MPEP 1303.02 do not set forth a specific time period for the re-mailing of the Notice of Allowance.

In view thereof, as of the time of issuance, the application was entitled to an adjustment 350, as indicated on the patent.

Any request for reconsideration of this decision must be submitted within two months of the mail date of the instant decision. The time period for reconsideration may not be extended pursuant to 37 CFR 1.136.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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OFFICE OF PETITIONS

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW
SUITE 700
WASHINGTON, DC 20036

In re Patent No. 7,123,554 :
Issued: October 17, 2006 : DECISION ON APPLICATION
Application No. 09/951,524 : FOR PATENT TERM ADJUSTMENT
Filed: September 14, 2001 :
Atty. Dkt. No: 011195 :

This is a decision on the "REQUEST FOR RECONSIDERATION," filed July 2, 2007.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,123,554 on October 17, 2006. The patent issue with an adjustment of 350 days. The request for reconsideration of decision on PTA continues to argue that the adjustment under 37 CFR 1.702(a)(1) was miscalculated.

Patentees continue to dispute the adjustment of 230 days attributed to the Office under 37 CFR 1. 702(a)(1) and 1.703(a)(1). Patentees argue that the period of adjustment commenced November 15, 2002 and ended February 4, 2004, the date that the Notice of Allowance was re-mailed.

Applicants' arguments have been considered but are not persuasive. The Notice of Allowance mailed July 2, 2003 was properly mailed within the meaning of 37 CFR 1.702(a)(1) which provides that the Office shall:

> "**Mail** at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 in an international application." (Emphasis added.)

Notice of Allowance was properly mailed July 2, 2003 to the correspondence address of record at the time of mailing. The re-mailing of the Notice of Allowance, or "Corrected Notice of Allowance," on February 4, 2004 does not negate the fact that the Notice of Allowance mailed July 2, 2003 was properly mailed within the meaning of 35 USC 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1).

Patentees' contend that "the date of sending the Notice **must** be changed in the file to agree with the date or such re-mailing." Review of the record does in fact reveal that the date of the re-mailed Notice of Allowance is properly entered into the record as February 4, 2004. However, as previously advised, the re-mailing of the Notice of Allowance does not alter the fact that the

Office mailed a Notice of Allowance under 35 USC 151 within the meaning of 35 USC 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1) on July 2, 2003, 14 months and 230 days after the filing date of the instant application.

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

Any request for reconsideration of this decision must be submitted within two months of the mail date of the instant decision. The time period for reconsideration may not be extended pursuant to 37 CFR 1.136.

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

Alesia M. Brown
Petitions Attorney
Office of Petitions

#9 DW

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

SEP - 8 2003

MAILED

SEP - 8 2003

OFFICE OF THE DIRECTOR
TC 3600

Volpe and Koenig, P.C.
Suite 400, One Penn Center
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103

In re application of	:	
Mario Meggiolan	:	DECISION ON PETITION
Application No. 09/951,547	:	TO WITHDRAW THE
Filed: September 14, 2001	:	HOLDING OF ABANDONMENT
For: WHEEL HUB FOR BICYCLE	:	

This is in response to applicant's petition to withdraw the holding of abandonment filed in the United States Patent and Trademark Office (USPTO) on February 21, 2003.

The petition is **DISMISSED as moot.**

A review of the application file reveals that an Office action was mailed on July 17, 2002 wherein a three-month shortened statutory period for reply was set. Since no response had been matched with the file and the six-month statutory period for response had expired, the application was held to be abandoned, and a notice to that effect was mailed on February 12, 2003.

A further review reveals that the original amendment of January 23, 2003, including a three-month extension of time, has since been matched with the file. That original amendment is timely. Since a timely response to the Office action of July 17, 2002 has been filed, the abandonment will be withdrawn. Since the original of the amendment in question is now in the file, there is no need to treat the petition on the merits and it is therefore dismissed as moot.

This application will be forwarded to the Supervisory Legal Instruments Examiner to withdraw the abandonment, return the application to pending status and enter the original amendment filed January 23, 2003 before forwarding to the examiner for treatment on the merits.

Randolph A. Reese

Randolph A. Reese, Special Programs Examiner
Patent Technology Center 3600
Telephone No.: (703) 308-2121

RAR/tpl: 8/28/03

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

Jansson, Shupe & Munger, Ltd.
245 Main Street
Racine, WI 53403

COPY MAILED

OCT 1 1 2001

OFFICE OF PETITIONS

In re Application of :
William G. Haen et al. :
Application No. 09/951,601 : DECISION GRANTING PETITION
Filed: September 11, 2001 :
Attorney Docket No. ALW-104US :

This is a decision on the petition filed September 12, 2001, as supplemented on September 28, 2001, requesting that the above-identified application be accorded a filing date of September 11, 2001.

The petition states that the application was attempted to be deposited on September 11, 2001, by Express Mail but the post office would not accept any Express Mail packages due to the state of emergency which existed. On September 28, 2001, a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail was filed. The statement indicated the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence.

The U.S. Patent and Trademark Office declared the interruption in Express Mail service of the USPS a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e).

The petition is granted. No petition fee is required and none has been charged.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of September 11, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 306-5586.

Eugenia A. Jones
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JANSSON, SHUPE & MUNGER, LTD
245 MAIN STREET
RACINE WI 53403

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JUN 0 2 2005

OFFICE OF PETITIONS

In re Application of :
William G. Haen et al. :
Application No. 09/951,601 : ON PETITION
Filed: September 11, 2001 :
Attorney Docket No. ALW–104US :

This is a decision on the petition filed April 6, 2005, to revive the above identified application under 37 CFR 1.137(a)[1] or in the alternative under 37 CFR 1.137 (b)[2].

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

---

[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);

(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]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 continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

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

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

A Final Office Action was mailed April 6, 2004 and set a three (3) month shortened statutory period for reply. On July 2, 2004, applicant replied with an amendment. On March 31, 2005, an Advisory Action was mailed advising that the amendment did not place the application in condition for allowance. Since the maximum period of time obtainable for an extension of time had elapsed and since no proper reply had been received, the application had become abandoned as of July 7, 2004. The instant petition and decision on petition precedes the mailing of a Notice of Abandonment.

PETITION UNDER 37 CFR 1.137(a)

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".[3] Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

> The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.[4]

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).[5] 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

---

[3]35 U.S.C. § 133.

[4]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).

[5]See MPEP 711(c)(III)(C)(2) for a discussion of the requirements for a showing of unavoidable delay.

negligence of otherwise reliable employees, the response is not timely received in the Office.[6]

Petitioner asserts that the delay in filing a proper response to the Office Action was due to the Examiner not acting on the amendment until March 31, 2005 or because petitioner believed that the amendment filed was a timely response.

Pursuant to both 37 CFR 1.116 and 37 CFR 1.135(b): (A) the admission of, or refusal to admit, any amendment after final rejection, or any related proceedings, will not operate to save the application from abandonment; and (B) the admission of, or refusal to admit, any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. Accordingly, the filing of an amendment that does not place an application in condition for allowance will not extend the statutory period for reply, regardless of when the amendment is considered by the examiner, and will not prevent abandonment of the application. It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete and proper reply. The fact that the examiner may not have an opportunity to review any amendment prior to the end of the period for reply does not relieve applicant of the responsibility to submit a complete and proper reply prior to the end of the statutory period for reply in order to avoid abandonment. In fact, the possibility of abandonment for failure to do so is precisely the possibility that applicants are cautioned of in §§ 1.116 and 1.135(b). Petitioner was not entitled to an advisory action prior to the end of the statutory period, nor should petitioner have relied on receiving one before taking action to save the application from abandonment.

Petitioner's contention that the Examiner caused or contributed to unavoidable delay is not well taken. The showing presented is insufficient to establish unavoidable delay within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).As petitioner has not provided a showing of evidence to satisfy the requirements of a grantable petition under 37 CFR 1.137(a), the petition will be dismissed.

PETITION UNDER 37 CFR 1.137(b)

This petition, as filed in the alternative under 37 CFR 1.137(b), is granted.

As the present petition was filed and decided under both 37 CFR 1.137(a) and (b), counsel's deposit account, No. 10-0270, has been charged in the amount of $250 for the unavoidable petition and $750 for the unintentional petition. As well, the deposit account is being charged in the amount of $395 for the Request for Continued Examination.

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

This matter is being referred to Technology Center 3724 for processing of the RCE filed April 6, 2005 and the previously filed amendment as the submission under 37 CFR 1.114.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 3

Loren G. Helmreich
Browning Bushman P.C.
Suite 1800
5718 Westheimer
Houston, TX 77057

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APR 16 2002

OFFICE OF PETITIONS

In re Application of
Nimberger, et al.
Application No. 09/951,602
Filed: September 13, 2001
Attorney Docket No. PG-100

ON PETITION

This is a decision on the petition under 37 CFR 1.137(f), filed February 15, 2002, to revive the instant nonprovisional application.

The petition is **GRANTED.**

The above-identified application became abandoned pursuant to 35 U.S.C. §122(b)(2)(B)(iii), 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 Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(f). The nonpublication request has been rescinded.

Accordingly, the failure to timely notify the Office of a foreign filing within 45 days as provided by 35 USC 122(b)(2)(B)(iii) is accepted as having been unintentionally delayed.

A Corrected Filing Receipt which sets forth the projected publication date accompanies this decision on petition.

The application file is being forwarded to Technology Center 1724 for examination in due course.

Telephone inquiries regarding 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

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/951,613	09/14/2001	Takayuki Nagashima	35.C15827	3155

5514 7590 03/20/2008

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER	
TRAN, NGHI V	

ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
03/20/2008	PAPER

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAR 2 0 2008

TECHNOLOGY CENTER 2100

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

In re Application of:
Takayuki, NAGASHIMA
Application No. 09/951,613
Filed: September 14, 2001
For: NETWORK SYSTEM AVAILABLE FOR SIMULTANEOUS CONNECTIONS OF PLURAL PIECES OF EQUIPMENT, ADVANCED EQUIPMENT IN THE SYSTEM, METHOD OF USING FUNCTIONS OF ANOTHER PIECE OF EQUIPMENT, AND STORAGE MEDIUM

DECISION GRANTING PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on 23 September 2006, requesting the re-mailing of the 07 June 2005 Office Action and the shortened statutory period for reply be reset to commence on the date of re-mailing.

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office presumes that the communication was properly mailed to the address of record. This presumption may be overcome by showing that the Office communication was not received.

The relevant portion of MPEP § 711.03(c) states:

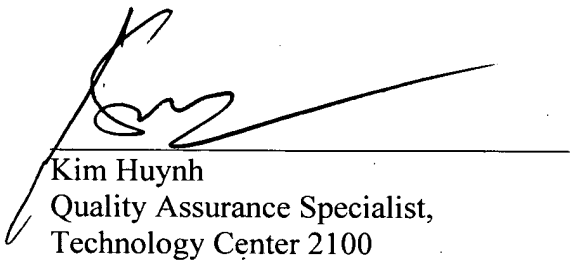
> The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

In support of the petition, the petitioner stated that the Final Office Action mailed 07 June 2006 was not received by applicants and stated applicant's representative only discovered the Final Office Action via a telephone call from the Examiner on 17 August 2006 to inquire about the status of the case. The petitioner supplied a copy of docket record (MASTER DOCKET) showing that the Final Office Action was never received by applicant's representative. The docket record shows no entry reflecting receipt of the Final Office Action.

For the above-stated reasons, the petition is **GRANTED**.

Upon the mailing of this decision, the application will be forwarded to the Technology Center Support Staff for re-mailing of the Office Action and the shortened statutory period for reply will be reset to commence on the date of re-mailing.

Any inquiry concerning this decision should be directed to the undersigned whose telephone is (571) 272-4147.



Kim Huynh
Quality Assurance Specialist,
Technology Center 2100
Computer Architecture, Software, and
Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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WENDY A. CHOI
ROHM AND HAAS COMPANY
100 INDEPENDENCE MALL WEST
PHILADELPHIA, PA 19106

COPY MAILED

OCT 2 6 2005

OFFICE OF PETITIONS

In re Application of	:	
Fasano et al.	:	
Application No. 09/951,639	:	ON PETITION
Filed: September 13, 2001	:	
Attorney Docket No. A01273	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 22, 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 the Issue Fee Transmittal and requisite 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

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

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

MAILED

AUG 0 5 2003

Technology Center 2100

In re Application of: Alan B. BUTT, et al.)
Application No. 09/951,711)
Filed: September 14, 2001) **DECISION ON REQUEST FOR**
For: LOCAL APPLICATION PROXY) **WITHDRAWAL AS ATTORNEY**
ARRANGEMENTS)

This is a decision on the Request To Withdraw from Representation filed June 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 effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Kenyon & Kenyon
1500 K Street, N.W.
Suite 700
Washington, DC 20005-1257

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: 20060925

DATE : February 23, 2006

TO SPE OF : ART UNIT 1625

SUBJECT : Request for Certificate of Correction on Patent No.: 6,635,782/APPL.09/951720

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

Please complete this form and return with file, within **7** days to:

Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**

If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**

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

Magdalene Talley

Thank You For Your Assistance

Certificates of Correction Branch

Tel. No. 703-308-9309 ext. 116

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

Note your decision on the appropriate box.

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

Comments:

SPE

1625

Art Unit

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 1:

Line 42, "followings." should read --following.--.

COLUMN 3:

Line 21, "biosynthesis"" should read --biosynthesis".--;
Line 30, "In" should read --in--;
Line 47, "(31.64" should read --(31.64%--; and
Line 63, "is" should read --are--.

COLUMN 4:

Line 28, "an" should read --as--;
Line 40, "No. 2969175," should read --No. 2989175,--;
Line 47, "above described" should read --above-described--; and
Line 49, "These" should read --This--.

COLUMN 5:

Line 64, "will" should read --with--.

COLUMN 6:

Line 12, "others" should read --other--.

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. US 6,635,782 B2

No. of add'l. copies @ 30¢ per page

Form PTO 1050 (Rev. 3-82)
NY_Main 409780v1

26 MAY 2004

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PRINTER'S TRIM LINE

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 7:

Line 5, close up right margin; and
Line 26, "—C_2F_7" should read -- —C_3F_7--.

COLUMN 10:

Line 66, "NO_2group," should read --NO_2 group,--.

COLUMN 11:

Line 12, "1.1%" should read --0.1%--;
Line 21, "imylbenzene" should read --amylbenzene--;
Line 24, "3C-MS" should read --GC-MS--;
Line 32, "In" should read --in--;
Line 57, "sacharides" should read --saccharides--;
Line 63, "sacharides" should read --saccharides--; and
Line 67, "sacharides" should read --saccharides--.

COLUMN 12:

Line 67, "above described" should read --above-described--.

COLUMN 13:

Line 33, "examples" should read --example--;
Line 38, "No." should read
--No. 7-48438, Japanese Patent Application Laid-Open No.--;
Line 43, "above described" should read --above-described--; and
Line 56, "above" should read --above- --.

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
(212) 218-2100 - Telephone
(212) 218-2200 - Facsimile

PATENT NO. US 6,635,782 B2

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26 MAY 2004

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

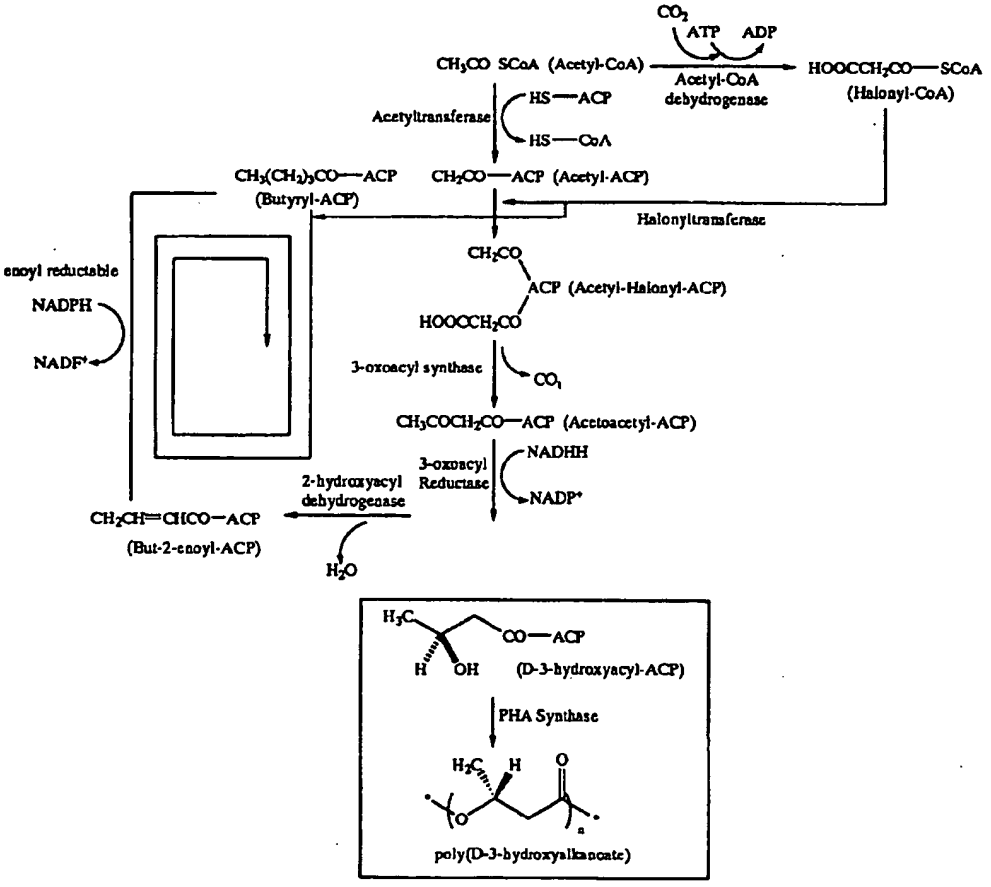
DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 16:

Lines 24-59,



should read

MAILING ADDRESS OF SENDER:
FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
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PATENT NO. US 6,635,782 B2

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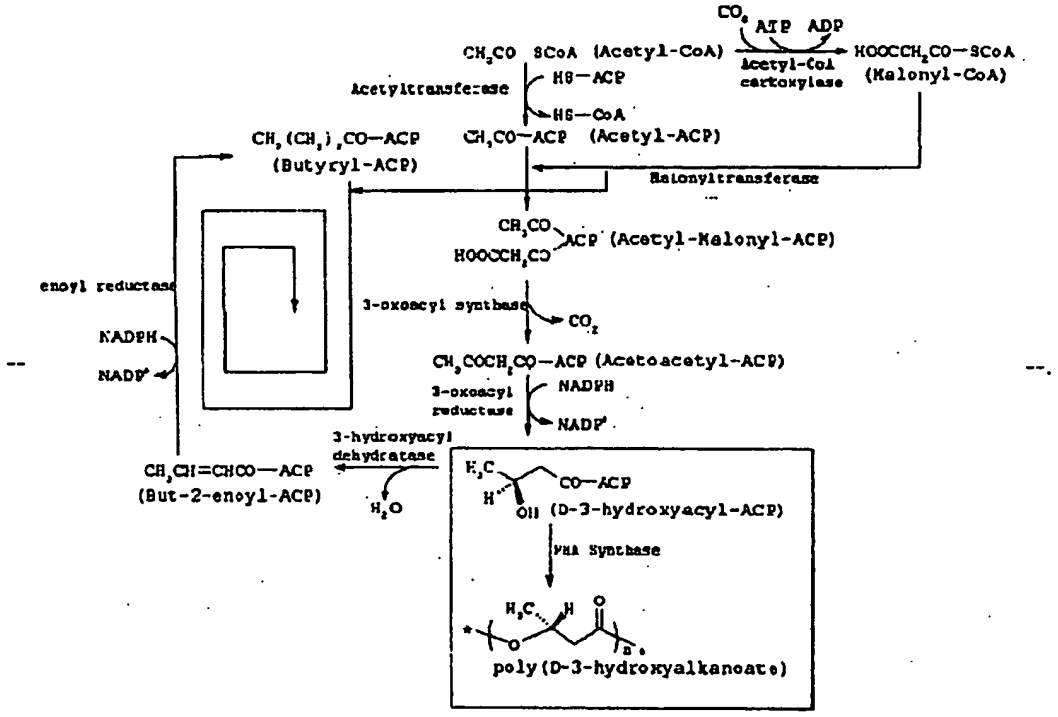
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 32, "such" should read --such as--; and
Line 38, "Phophoenolpyruvic" should read --Phosphoenolpyruvic--.

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PATENT NO. US 6,635,782 B2

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UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 18:

Line 13, "then" should read --than--;
Line 18, "fatty" should read --a fatty--;
Line 20, "ing" should read --ed-- and "acid by" should read --acid. By--;
Line 34, "energy" should read --energy source--;
Line 57, "above described" should read --above-described--;
Line 58, "above described" should read --above-described-- and "benzoyla-" should read --benzoyl- --;
Line 59, "lkaoic" should read --alkanoic--; and
Line 64, "above described" should read --above-described--.

COLUMN 19:

Line 12, "above described" should read --above-described--;
Line 18, "cell;" should read --cell:--; and
Line 47, "gluconate;" should read --gluconate:--.

COLUMN 20:

Line 42, "esoulin:" should read --esculine:--;
Line 45, "agar;" should read --agar:--; and
Line 62, "above described" should read --above-described--.

COLUMN 21:

Line 9, "be" should read --the--; and
Line 52, "disacoharides" should read --disaccharides--.

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CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 22:

Line 2, "above described" should read --above-described--;
Line 46, "above described" should read --above-described--; and
Line 66, "it" should be deleted.

COLUMN 23:

Line 20, "above described" should read --above-described--.

COLUMN 25:

Line 28, "above described" should read --above-described--;
Line 31, "above described" should read --above-described--;
Line 37, "microorganisms," should read --microoganism,--;
Line 40, "above described" should read --above-described--; and
Line 43, "above described" should read --above-described--.

COLUMN 27:

Line 33, "above described" should read --above-described--;
Line 50, "above described" should read --above-described--;
Line 54, "above described" should read --above-described--; and
Line 58, "with in" should read --within--.

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CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 28:

Line 15, "as" should read --as a--;
Line 32, "Dycyclopropylketone" should read --Dicyclopropylketone--;
Line 38, "is it." should read --it is.--;
Line 45, "above described" should read --above-described--; and
Line 64, "organism" should read --organisms--.

COLUMN 29:

Line 33, "limited a" should read --a limited--; and
Line 37, "above described" should read --above-described--.

COLUMN 31:

Line 2, "above described" should read --above-described--;
Line 12, "above described" should read --above-described--; and
Line 25, "abbrivated" should read --abbreviated--.

COLUMN 37:

Line 34, "end" should read --and--.

COLUMN 41:

Line 60, "19 medium" should read --M9 medium--.

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CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 44:

Line 24, "cometimes" should read --sometimes--.

COLUMN 45:

Line 36, "vacuo" should read --in vacuo--.

COLUMN 49:

Line 53, "an" should read --as--.

COLUMN 52:

Line 7, "vacuo" should read --in vacuo--.

COLUMN 53:

Line 40, "n-amylvenzene" should read --n-amylbenzene--.

COLUMN 55:

Line 25, "Mw=23000." should read --Mw=238000.--.

COLUMN 57:

Line 38, "meduim" should read --medium--; and
Line 39, "place" should read --placed--.

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PATENT NO. US 6,635,782 B2

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CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 58:

Line 21, "lyophilezed." should read --lyophilized.--; and
Line 63, "membrace" should read --membrane--.

COLUMN 59:

Line 13, "strilized" should read --sterilized--; and
Line 65, "n-amylvenzene" should read --n-amylbenzene--.

COLUMN 60:

Line 35, "n-anylbenzene" should read --n-amylbenzene--.

COLUMN 62:

Line 52, "them" should read --then--.

COLUMN 63:

Line 12, "culteured" should read --cultured--; and
Line 39, "ayalysis" should read --analysis--.

COLUMN 64:

Line 28, "*cichirii*" should read --*cichorii*--; and
Line 51, "chrolo-" should read --chloro- --.

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CERTIFICATE OF CORRECTION

PATENT NO. : US 6,635,782 B2

DATED : October 21, 2003

INVENTOR(S) : TSUTOMU HONMA 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 66:

Line 58, "not" should read --does not--.

COLUMN 67:

Line 16, "—C_3F_7)," should read -- —C_3F_7,--.

COLUMN 68:

Line 40, "not" should read --does not--.

COLUMN 69:

Line 19, "olyhydroxyalkanoate" should read --polyhydroxyalkanoate--.

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MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037

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FEB 2 5 2002

Director's Office
Group 3700

Paper No. 4

In re Application of
INABA ET AL.
Application No.: 09/951,721
Filed: September 14, 2001
Attorney Docket No.: Q66116

DECISION GRANTING PETITION TO RESET PERIOD FOR REPLY

This is a decision on the petition filed on January 22, 2002, requesting that the shortened statutory period for reply set forth in the Office communication mailed on December 12, 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 17, 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 12, 2001 is hereby reset to run FROM THE RECEIPT DATE OF January 17, 2002.

Richard A. Bertsch, Director
Technology Center 3700
(703) 308-0975

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. 11

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ALEXANDRIA, VA 22320

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OFFICE OF PETITIONS

In re Application of
Catherine C. Marshall et al
Application No. 09/951,733
Filed: June 14, 2001
Attorney Docket No. 110013

:DECISION NOTING JOINDER OF
:INVENTOR; DISMISSAL OF
:PETITION UNDER 37 CFR 1.47(a)
:AS MOOT; AND NOTICE OF
:NONCOMPLIANCE

This in response to the petition under 37 CFR 1.47(a), filed January 11, 2002, and supplemented on January 23, 2002 and February 12, 2002. The correspondence received on January 23, 2002 included a declaration signed by previously nonsigning inventor Catherine C. Marshall.

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 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).

The declaration signed by joint inventor Frank M. Shipman III does not comply with the provisions of 35 USC 115 and 37 CFR 1.63(a)(3) in that his country of citizenship has been omitted. Accordingly, **an executed, substitute declaration[1] which sets forth all the other named inventors and setting forth the country of citizenship of Mr. Shipman III is required to be submitted within TWO MONTHS from the mail date of this decision.** Extensions of time are available under the provisions of 37 CFR 1.136(a). Failure to timely reply will result in the abandonment of this application.

[1] The substitute declaration needs only to be signed by Mr. Shipman, but must be a complete declaration and which sets forth the names of all the other joint inventors. The declaration cannot be altered.

The correspondence should be addressed to: U.S. Patent and Trademark Office, Box Missing Parts, P. O. Box 2327, Arlington, Virginia 22202; or Commissioner for Patents and Trademarks, Box Missing Parts, Washington, D.C. 20231.

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

This application is being forwarded to the Office of Initial Patent Examination to await receipt of the substitute declaration setting forth the country of citizenship for joint inventor Frank M. Shipman III.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
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Michael A. O'Neil. P.C.
8150 North Central Expressway
Suite 1150
DALLAS TX 75206

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OFFICE OF PETITIONS

In re Application of :
Xiao Ping Zhou, et al. :
Patent No. 6,465,696 : NOTICE
Application No. 09/951,739 :
Filed: September 11, 2001 :
Attorney Docket No. 300100-1043

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.

There is no indication that the petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Larissa Piccardo appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. If, Larissa Piccardo desires to receive correspondence regarding this file, the appropriate power of attorney documents must be submitted. A courtesy copy of this decision is being mailed to Larissa Piccardo, the petitioner herein. However, until otherwise instructed, all future correspondence regarding this application file will be directed solely to the above-noted correspondence address of record.

Inquiries related to this communication should be directed to the undersigned at (571) 272-2991.

Terri Johnson
Petitions Examiner
Office of Petitions

cc: **BAKER BOTTS L.L.P.**
One Shell Plaza
910 Louisiana
Houston, TX 77002

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 14

Steven C. Sereboff
SOCAL IP LAW GROUP
310 N. Westlake Blvd. Ste 120
Westlake Village, CA 91362

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AUG 1 5 2003

Technology Center 2100

In re Application of:)
Itakura)
Application No. 09/951,797) **DECISION ON REQUEST FOR**
Filed: September 13, 2001) **WITHDRAWAL AS ATTORNEY**
For: MAINTAINING MOST CURRENT)
CLIENT VERSION

This is a decision on the Request To Withdraw from Representation filed August 7, 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 August 7, 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

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

cc: Jaiwei Huang
J.C. Patents, Inc.
4 Venture, Suite 250
Irvine, CA 92618

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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JAIWEI HUANG
J.C. PATENTS, INC.
4 VENTURE
SUITE 250
IRVINE, CA 92618

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OFFICE OF PETITIONS

In re Application of :
Itakura Yuichiro, et al. :
Application No. 09/951,797 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. J1-1-03378-D-US :

This is a decision on the petition 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 in a timely manner to the final Office action mailed September 20, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. An Advisory action was mailed December 12, 2002 indicating that the reply filed on November 27, 2002, failed to place the application in condition for allowance. Accordingly, the application became abandoned on December 21, 2002. The Notice of Abandonment was mailed on May 5, 2003.

The above-identified application has been abandoned for an extended period of time. The US Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178; 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109) (applicant obligated under 37 CFR 10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 CFR 1.137(b) to the US Patent and Trademark Office).

The Revocation of Power of Attorney filed on December 10, 2004 is not accepted. In the instant case, President of Global Media Online, Inc., Masatoshi Kumagai, has not satisfactorily established ownership of the property to the satisfaction of the Commissioner. More specifically, in order for an assignee to take action in a case before the Office, compliance with 37 CFR 3.73(b) must be satisfied. 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 matter pending before the Office. A blank 37 CFR 3.73(b), (Form PTO/SB/96) accompanies this decision.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Amendment and a Request for Continued Examination (RCE); (2) the petition fee; and (3) the required statement of unintentional delay have been received.

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

The application matter is being forwarded to Technology Center 2100, Art Unit 2167 for processing the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Retta Williams

Retta Williams
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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Paper No.7

John Wiley Horton
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe St., 2nd Floor
Tallahassee FL 32301

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OFFICE OF PETITIONS

In re Application of :
Wilson :
Application No. 09/951,811 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. N/A :
For: TOBACCO DIPPING CUP WITH SALIVA RESERVOIR

This is a decision on the petition under 37 CFR 1.137(b), filed February 22, 2005 (certificate of mailing date February 15, 2005), 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(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 13, 2003, which set a period for reply of three (3) months. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on September 14, 2003 for lack of reply. A Notice of Abandonment was mailed on January 8, 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(a) 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).This petition lacks item (2).

Regarding (2) above, the payment of the petition fee is a prerequisite to the filing of a petition to revive under 37 CFR 1.137(b). This requirement cannot be waived. MPEP 711.03(c)(III)(B). Therefore, consideration of the merits of the petition before receipt of the full petition fee is prohibited.

The current small entity fee for filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is set forth in 37 CFR 1.17(m) as $750.00. A review of Office records indicates that petitioner has paid $685.00 for the petition fee and $55.00 for a terminal disclaimer fee.

Since the above-identified application is a utility application filed after June 8, 1995,a terminal disclaimer is **not** required. Therefore, the $55.00 designated as a terminal disclaimer fee will be applied towards payment of the $750.00 petition fee.

Petitioner has paid a total of $740.00 ($685.00 + $55.00) towards the $750.00 petition fee. **Petitioner must submit an additional $10.00 before the Office will consider the merits of the petition.**

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: (703) 872-9306 – ATTN: Office of Petitions

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
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No.7

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Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe St., 2nd Floor
Tallahassee FL 32301

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OFFICE OF PETITIONS

In re Application of
Wilson
Application No. 09/951,811
Filed: September 14, 2001
Attorney Docket No. N/A
For: TOBACCO DIPPING CUP WITH SALIVA RESERVOIR

DECISION ON PETITION

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OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.137(b), filed February 22, 2005 (certificate of mailing date February 15, 2005), 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(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 13, 2003, which set a period for reply of three (3) months. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on September 14, 2003 for lack of reply. A Notice of Abandonment was mailed on January 8, 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(a) 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).This petition lacks item (2).

Regarding (2) above, the payment of the petition fee is a prerequisite to the filing of a petition to revive under 37 CFR 1.137(b). This requirement cannot be waived. MPEP 711.03(c)(III)(B). Therefore, consideration of the merits of the petition before receipt of the full petition fee is prohibited.

The current small entity fee for filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is set forth in 37 CFR 1.17(m) as $750.00. A review of Office records indicates that petitioner has paid $685.00 for the petition fee and $55.00 for a terminal disclaimer fee.

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JUN 20 2005

Since the above-identified application is a utility application filed after June 8, 1995,a terminal disclaimer is **not** required. Therefore, the $55.00 designated as a terminal disclaimer fee will be applied towards payment of the $750.00 petition fee.

Petitioner has paid a total of $740.00 ($685.00 + $55.00) towards the $750.00 petition fee. **Petitioner must submit an additional $10.00 before the Office will consider the merits of the petition.**

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

RECEIVED
JUN 22 2005
OFFICE OF PETITIONS

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

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

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
Office of the Deputy Commissioner
for Patent Examination Policy

06/21/2005 MAHMED1 00000055 09951811
01 FC:2453 750.00 OP

Adjustment date: 06/21/2005 MAHMED1
05/31/2005 AKELLEY 00000016 09951811
01 FC:1999 -65.00 OP

ustment date: 06/21/2005 MAHMED1
25/2005 AWONDAF1 00000078 09951811
2 FC:1999 -675.00 OP

OIPE JC1712
JUN 20 2005
PATENT & TRADEMARK OFFICE

18

In the United States Patent and Trademark Office

Mailed: 6-15-05

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

Dear Sir or Madam:

Please find enclosed the additional $10.00 requested from the Petitioner:

Applicant Name: **CHRIS WILSON**

Application No.: **09/951,811**

Filed: **September 14, 2001**

Title: **TOBACCO DIPPING CUP WITH SALIVA RESERVIOR**

X Check for $10.00 for "Petition under 37 CFR 1.137 (b)."

Respectfully submitted,

J. WILEY HORTON, ESQUIRE
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095
(215 S. Monroe Street, 2d Floor, 32301)
850-222-3533
Fax: 850-222-2126
Reg. No. 41,851
Attorney for Applicant

UNITED STATES 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

John Wiley Horton
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe St., 2nd Floor
Tallahassee FL 32301

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AUG 11 2005

OFFICE OF PETITIONS

In re Application of :
Wilson :
Application No. 09/951,811 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. N/A :
For: TOBACCO DIPPING CUP WITH SALIVA RESERVOIR

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

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed June 13, 2003, which set a period for reply of three (3) months. No extensions of time having been obtained pursuant to 37 CFR 1.136(a), this application became abandoned on September 14, 2003 for lack of reply. A Notice of Abandonment was mailed on January 8, 2004.

Applicant has submitted a reply in the form of an amendment, an acceptable statement of the unintentional nature of the delay in responding to the June 13, 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 3700 for consideration of the amendment filed February 22, 2005 (certificate of mailing date February 15, 2005) and for examination in due course.

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
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

LERNER AND GREENBERG, PA
P O BOX 2480
HOLLYWOOD, FL 33022-2480

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AUG 23 2005

OFFICE OF PETITIONS

In re Patent of :
Gebauer et al. :
Patent No. 6,815,613 :
Issued: November 9, 2004 : ON PETITION
For: ELECTRONIC COMPONENT WITH :
EXTERNAL CONNECTION ELEMENTS :

This is a decision on the Petition, filed January 18, 2005, under 37 CFR 1.183, for waiver of 37 CFR 3.81(a), to correct the name of the assignee in the above-identified patent. The petition is properly treated as a request under 37 CFR 3.81(b)[1].

The Petition is **granted**.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificate of Correction Branch at (703) 305-8309.

The application is being referred to the Certificate of Corrections Branch for issuance of the requested Certificate of Correction, filed November 29, 2004.

Derek L. Woods
Petitions Attorney
Office of Petitions

[1] See, 1283 OG 148 22 June 2004, 69 Fed. Reg. 29865 26 May 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AUG 19 2003

Paper No. 17

In re Application of :
William C. Neubauer *et al* : DECISION ON PETITION
Application No. 09/951,840 :
Filed: September 12, 2001 :
Attorney Docket No. 28363/37706

This is a decision on the petition filed by facsimile transmission on August 8, 2003 by which petitioners request supervisory review and withdrawal of the restriction requirement promulgated as part of the final rejection dated May 12, 2003. No fee is required for the petition.

The petition is granted.

A review of the record shows that on October 25, 2002, the examiner authored an initial Office action in the form of a requirement for restriction between claims directed to an apparatus and claims directed to a method performed by that apparatus. In addition, the restriction requirement further required an election among several groups of allegedly patentably distinct apparatus claims. On December 20, 2002, petitioners elected a single one of the groups of apparatus claims for prosecution in this application. The election was made without traverse. Petitioners thereafter received a first action on the merits of the claims drawn to the elected invention, and in response to that action, on April 18, 2003, petitioner filed an amendment which canceled the non-elected claims, requested reconsideration of the rejection of elected claims 22-26, and added new claims 41-56. The examiner then promulgated a final rejection on May 12, 2003, in which claims 22-26 were rejected, and claims 41-56 were held to be withdrawn from further prosecution as being for an invention deemed to be patentably distinct from claims 22-26, upon which petitioners had received an action. Petitioner seasonably traversed this requirement, and the examiner adhered to his position. See paper Nos. 14 and 15.

A review of the petition, and of the record, shows that the requirement for restriction promulgated in the final rejection dated May 12, 2003 is improper. At least independent claim 41 is not related to independent claim 22 as combination-subcombination. Rather, claim 41 is merely a slightly broader version of claim 22 and the two claims are directed to the same disclosed invention. In fact, all pending claims are directed to the same disclosed invention, namely an "outsert-forming apparatus that forms outserts having printed product information thereon." The claims merely vary in scope, and the presence of one or more additional elements that comprise a part of such apparatus in one claim as opposed to a different claim does not convert the two claims into claims that bear a combination-subcombination relationship. A subcombination is a component of a combination, and is not the combination somewhat more broadly claimed.

As the examiner's restriction requirement dated May 12, 2003 was in error, the finality of the Office action dated May 12, 2003 is hereby vacated with respect to both the restriction requirement (which was erroneous) and the action on the merits (which was incomplete for failing to act on the merits of claims 41-56). Claims 41-56 as presented in the amendment dated April 18, 2003 are to be entered, and an action on the merits of claims 22-26 and claims 41-56 is to be rendered. This application is being forwarded to the Supervisory Patent Examiner of Art

Unit 3721 who will undertake to see that these items are accomplished in an expeditious fashion, and, in particular, that an action on the merits is rendered as soon as possible.

PETITION GRANTED.

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

Marshall, Gerstein & Borun
6300 Sears Tower
233 South Wacker
Chicago, IL 60606-6357

UNITED STATES
PATENT AND
TRADEMARK OFFICE

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

#7

FEB 4 2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

In re Application of	:
Muriel Moser et al	:
Serial No.: 09/951,849	: PETITION TO MAKE SPECIAL
Filed: September 10, 2001	:
Attorney Docket No.: DECLE55.1CP2C1	:

This is in response to applicants' petition filed September 23, 2002, to make the above-identified application special under the provisions of 37 CFR 1.102(d). The delay in acting on this petition is regretted.

Applicant has satisfied the provisions set forth in M.P.E.P. 708.02, X. 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 6

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

APR 1 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of :
Christopher Turner et al :
Application No. 09/951,850 : DECISION ON REQUEST TO
Filed: September 10, 2001 : WITHDRAW AS ATTORNEY
For: **SYSTEM AND METHOD FOR DYNAMICALLY RE-CALIBRATING AN OPTICAL DISC DRIVE** :

This is a decision on the request to withdraw as attorney/agent of record filed on October 31, 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 and agents of record in this application, including all attorneys and agents associated with Customer Nos. 24251 and 27869 are removed from record.

All future communications from the Office will be directed to the address listed below (cc1) until otherwise notified by applicant. There appears to be two addresses for the applicant. If the new address of record (cc1) is improper, applicant must submit a formal Change of Correspondence Address. A courtesy copy of this decision is being mailed to Alan MacPherson (cc2) at the address provide by petitioner on the related applications, however, all future communications from the Office will be directed to the address listed below (cc1) 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

cc1: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

cc2: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

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

Emerson & Skeriotis
One Cascade Plaza - Fourteenth Floor
Akron, OH 44308

COPY MAILED

AUG 16 2002

OFFICE OF PETITIONS

In re Application of :
Joseph A. Roller et al. :
Application No. 09/951,854 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 1209.0022 :

This is a decision on the petition under 37 CFR 1.137(b), filed August 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 Missing Parts of Application (Notice) mailed October 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 December 13, 2001.

The application 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) 308-6911.

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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OCT - 9 2003

SONNENSCHEIN NATH & ROSENTHAL LLP
P.O. BOX 061080
WACKER DRIVE STATION, SEARS TOWER
CHICAGO IL 60606-1080

In re Application of	:	
Daniela Salvemeni	:	
Serial No.: 09/951,855	:	WITHDRAWAL OF ABANDONMENT
Filed: September 13, 2001	:	
Attorney Docket No.: 60019610-0254	:	

This is in response to the petition under 37 CFR 1.181, filed August 11, 2003, requesting revival of the above-identified application based on timely reply to an Office action.

A review of the file history shows the examiner mailed an Office action to applicants on November 29, 2002, setting a one month shortened statutory time period for reply. Upon failure to receive a reply the application was held abandoned by Notice of Abandonment mailed to applicant on July 28, 2003. Applicant states that a reply was filed on December 23, 2002, and provides a copy of a reply with a properly executed Certificate of Mailing dated December 23, 2002. The original submission has not been located and the copy provided with the petition will be used in lieu thereof. In view of applicant's timely reply the Notice of Abandonment is withdrawn as having been mailed in error and the application is restored to a 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, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-7230.

John Doll
Director, Technology Center 1600

- UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-145

APR 27 2005

WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
One Liberty Place – 46th Floor
Philadelphia, PA 19103

In re application of
John Kane :
Application No. 09/951,868 : **DECISION ON REQUEST**
Filed: September 13, 2001 : **FOR WITHDRAWAL OF**
For: SYSTEM AND METHOD FOR COMPUTERIZED ORDERING OF VACCINES : **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 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. Caldwell does not now have, and apparently never has had, power of attorney in this application. There is no record of power of attorney ever being given to the attorney making the request. Furthermore, the attorneys listed in the request (Customer Number 23377) do not correspond with those named in the Power of Attorney in the declaration, thereby creating confusion as to who is withdrawing. The original Power of Attorney appointed several attorneys. Of these attorneys, Mark DeLuca and James M. Hunter, Jr. are not associated with Customer No. 23377. 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

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(571) 272-6611

SNM/pav: 03/14/05

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 5

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 25 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:
09/951,869

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 8

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

FEB 03 2003

Technology Center 2600

In re Application Serial No.:

09/951,869

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

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. 5

FRISHAUF, HOLTZ, GOODMAN &
LANGER & CHICK, PC
767 THIRD AVENUE
25TH FLOOR
NEW YORK, NY 10017-2023

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MAY 2 0 2002

OFFICE OF PETITIONS

In re Application of :
Shibasaki, et al. :
Application No. 09/951,872 : DECISION GRANTING PETITION
Filed: September 13, 2001 :
Attorney Docket No.01577/JH :

This is a decision on the petition filed January 17, 2002, (certificate of mailing dated December 5, 2001), requesting that the above-identified application retain the presently accorded a filing date of September 13, 2001, with page 3 of he specification as part of the original disclosure.

On September 13, 2001, the above-identified application was filed. On October 11, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Items of a Nonprovisional Application" (the "Notice"), stating that the application had been accorded a filing date of September 13, 2001, however, page 3 of the specification appeared to have been omitted. The Notice allowed a non-extendable two month period for reply beginning from the mailing date of the Notice.

In response, on January 17, 2002, (certificate of mailing dated December 5, 2001), applicants filed the present petition, a copy of page 3 of specification, and a postcard receipt date-stamped by the Office showing that, among other items, nineteen (19) pages, encompassing the specification, claims, and abstract, were received on September 13, 2001.

Upon review of the record, page 3 of the specification has not been located among the application papers. However, the evidence is convincing that the application papers deposited September 13, 2001, included page 3 of the specification, which was subsequently misplaced by the Office. Therefore, the application, including page 3 of the specification, was complete on filing and entitled to the presently accorded filing date of September 13, 2001.

Accordingly, the petition is granted.

Applicant is advised that the Notice was sent in error and is vacated. Therefore, no petition fee is necessary and the fee of $130.00 will be refunded to deposit account 06-1378..

The application file is being returned to the Office of Initial Patent Examination for further processing with the presently accorded filing date of September 13, 2001, using the nineteen (19) pages encompassing the specification, claims, and abstract filed September 13, 2001.

Any inquiries related to this decision should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703)305-0010

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

ERIK B. CHERDAK & ASSOCIATES
11300 ROCKVILLE PIKE
SUITE 906
ROCKVILLE, MD 20852

COPY MAILED

OCT 2 2 2002

OFFICE OF PETITIONS

In re Application of :
Damon Williams et al :
Application No. 09/951,888 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. 046.0032 :

This is a decision on the petition under 37 CFR 1.137(b), filed October 9, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed October 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 December 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 $720.00 extension of time submitted with the petition on October 10, 2002 was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

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

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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Browdy and Neimark, P.L.L.C.
624 Ninth Street, NW
Suite 300
Washington, DC 20001-5303

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JUL 20 2007

OFFICE OF PETITIONS

In re Application of :
Andre Van Agthoven et al. :
Application No. 09/951,903 : DECISION ON PETITION
Filed: September 14, 2001 : TO WITHDRAW
Attorney Docket No. AGTHOVEN=3 : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 19, 2007.

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

A review of the file record indicates that the power of attorney to Browdy and Neimark, P.L.L.C. has been revoked by the assignee of the patent application on July 9, 2007. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is moot.

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

Telephone inquires concerning this decision should be directed to Terri Williams at 571-272-2991.

Terri Williams
Petitions Examiner
Office of Petitions

cc: **Beckman Coulter, Inc.**
P.O. Box 169015
Mail Code 32-A02
Miami, FL 33116-9015

RECEIVED
CENTRAL FAX CENTER
JUN 22 2005

MIKHAIL LEVITIN, BORIS KHAYTIN
P.O. BOX 102,
REEDERS, PA 18352.
E-mail: vitality@ptd.net

June 22, 2005

Attention: E. Shirene Willis
Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 872-9306

Re: Serial No.: 09/951,917

To Whom It May Concern:

Attached is the form for a payment by a credit card in the amount of $140.00 as a payment for the balance for the above cited application.

Sincerely,

Mikhail Levitin

Boris Khaytin

06/23/2005 BBONNER 00000012 09951917
01 FC:1999
140.00 OP

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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. 18

MIKHAIL LEVITIN
P.O. BOX 102
REEDERS PA 18352-0102

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MAY 3 1 2005

OFFICE OF PETITIONS

In re Application of
Levitin, et al.
Application No. 09/951,917
Filed: September 14, 2001
Attorney Docket No. N/A
For: HEAT EXCHANGE DEVICE

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed on April 7, 2005, which requests revival of the above-identified application.

The petition under 37 CFR 1.137(a) 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(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 CFR 1.137(a)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action mailed September 23, 2003, which set an extendable three month period for reply. Applicants filed unsigned an after final amendment on November 12, 2003. On February 5, 2004, applicants filed a signed version of the November 12, 2003 amendment after final. No extensions of time being received, this application became abandoned on December 24, 2003. Nevertheless, the Office mailed an Advisory Action on May 12, 2004. A Notice of Abandonment was mailed on August 3, 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; (2) the petition fee as set forth in § 1.17(l) ($250.00); and (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.

Any revival petition under 37 CFR 1.137 must be accompanied by the petition fee. The payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to

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Paper No. 3

John H. Allie
Woodard, Emhardt, Naughton, Moriarty and McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis IN 46204-5137

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APR 18 2002

OFFICE OF PETITIONS

In re Application of :
Ress, et al. :
Application No. 09/951,929 : LETTER GRANTING
Filed: September 11, 2001 : FILING DATE
Attorney Docket No: 6001-916 :

This is a response to the paper styled "Petition Under 37 CFR 1.10(c) or 1.10(d)" filed January 16, 2002 (certificate of mailing dated November 20, 2001), which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of September 11, 2001, rather than the presently accorded filing date of September 12, 2001.

The United States Patent and Trademark Office ("USPTO") is aware that some post offices refused to accept the deposit of mail for delivery by Express Mail service on September 11, 2001. The USPTO has designated such interruption in the Express Mail service of the United States Postal Service ("USPS") as a postal service interruption within the meaning of 35 USC 21(a) and 37 CFR 1.6(e).

The submission filed January 16, 2002, states that an attempt was made to deposit the application in the Express Mail service on September 11, 2001, but was refused by the USPS because all airplanes in the United States, including Express Mail service airplanes, were grounded. Were it not for the designated interruption in the USPS, the application would have been accepted by the USPS and accorded a "date-in" of September 11, 2001. Under 37 CFR 1.10(a), correspondence received by the USPTO that was delivered by "Express Mail Post Office to Addressee" service of the USPS is considered filed in the USPTO on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Based on the submission filed January 16, 2002, it is concluded that the present application would have been filed on September 11, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of September 11, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2001.

Telephone inquiries concerning this matter may be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.

Patricia Faison-Ball
for

Beverly M. Flanagan
Supervisory 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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Paper No. 6

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE CA 95110

MAIL

NOV 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application Serial No.:

09/951,931

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request to Withdraw as Attorney is **GRANTED**.

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 withdrawing attorney(s).

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

cc: Steve Volk
Chairman of the Board
DataPlay, Inc.
2560 55th Street
Boulder, CO 80301-5706

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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WASHINGTON, DC 20231
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Paper No. 9

STEVE VOLK
CHAIRMAN OF THE BOARD
DATAPLAY, INC.
2560 55TH STREET
BOULDER, CO 80301-5706

MAILED

FEB 0 3 2003

Technology Center 2600

In re Application Serial No.:

09/951,931

ON REQUEST TO
WITHDRAW AS ATTORNEY

The Request filed 12/24/02 to Withdraw as Attorney is **DISMISSED AS MOOT**.

The petitioner, James E. Parsons, is no longer of record as attorney and agent. Therefore, he cannot request a change of address.

There appears to be two addresses for the applicant. If the address of record (above) is improper, applicant must submit a formal Change of Correspondence Address.

Further communications will continue to be directed to the address of record listed above until such a time as applicant properly notifies the Patent and Trademark Office of a change of address.

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

cc: Skjerven Morrill LLP
25 Metro Drive
Suite 700
San Jose, CA 95110

cc: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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JOHN H. ALLIE
WOODARD, EMHARDT, NAUGHTON, MORIATY AND MCNETT
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

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FEB 2 0 2002

OFFICE OF PETITIONS

In re Application of	:
Robert A. Ress Jr.	: DECISION GRANTING
Application No. 09/951,933	: PETITION
Filed: September 11, 2001	:
Attorney Docket No. 6001-865	:

This is a decision on the paper styled "Petition Under 37 CFR 1.10(d) TO ACCORD FILING DATE" filed January 16, 2002, which is being treated as a submission under 37 CFR 1.6(e) requesting that the above-identified application be accorded a filing date of September 11, 2001, rather than the presently accorded filing date of September 12, 2001.

The United States Patent and Trademark Office (USPTO) is aware that as a result of the events in New York City on September 11, 2001, the post office declined to accept the mailer containing the application. The Commissioner has designated the interruption in the service of the United States Postal Service (USPS) as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The submission filed January 16, 2002, states that the application was deposited in Express Mail service on September 11, 2001, and, but for the designated interruption in the USPS, would have been accorded that date as the "date-in." Under 37 CFR 1.10(a), correspondence received by the USPTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. Based on the submission filed January 16, 2002, it is concluded that the present application would have been filed on September 11, 2001, if it were not for the designated interruption in the USPS.

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the USPS on September 11, 2001.

No petition fee is required.

The petition is granted. A copy of the corrected Filing Receipt is enclosed.

The application is being forwarded to Technology Center Art Unit 3724 for examination in due course with a filing date of September 11, 2001.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (703) 305-8859.

Brian Hearn
Senior 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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WASHINGTON, D.C. 20231
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JJGJr: 12-01

Paper No. 4

JEFFREY C. HOOD
CONLEY, ROSE & TAYON, P.C.
P.O. BOX 398
AUSTIN, TX 78767

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JAN 1 1 2002

OFFICE OF PETITIONS

In re Application of
Deering, et al.
Application No. 09/951,934
Filed: 11 September, 2001
Attorney Docket No. 5181-77201

: DECISION GRANTING PETITION

This is a decision on the petition filed on 4 December, 2001, styled Petition to Establish Prior Receipt in the P.T.O of Items Considered as Omitted by the P.T.O.--Response to "Notice of Omitted Items," and properly considered under 37 C.F.R. §1.53, requesting that Figures 13C and 13 D, as described in the specification, be accorded a filing date of 11 September, 2001.

The petition is **GRANTED**.[1]

The application was deposited on 11 September, 2001, and the record contains the transmittal sheet indicating that the papers to be submitted included "Drawings Informal Figure(s) 1-17 on 27 sheet(s), however, a review of the application indicated that Figures 13C and 13 D, as described in the specification, were absent from the application.

The Office mailed on 2 November, 2001, a "Notice of Omitted Items(s) in a Nonprovisional Application," stating that while a filing date had been accorded to the application as filed, it appeared that Figures 13C and 13 D, as described in the specification, were absent from the application. The Notice further indicated that the Applicant must respond within two months of the Notice mail date.

Petitioner filed a response on 4 December, 2001, with the instant petition, a copy of the Office-stamped filing receipt card, a copy of documents identified as Figures 13C and 13D, authorization to charge the petition fee, and the required copy of the Notice.

The copy of the date stamped (11 September, 2001) receipt card (with Office bar code and application number) filed with the instant petition indicates that the application was filed with, *inter alia*, 27 sheets of drawings Figures 1-17.

---

[1] No petition fee was charged against Petitioner's Deposit Account 50-1505/5181-77201/JCH upon filing.

A review of the application papers reveals that prior to the instant petition the record contained 25 sheets of drawings, with no duplications, none of which are identified as Figures 13C and 13D.

A review of the above-described receipt card reflects the Office receipt of documents, *inter alia*, "27 page(s) Drawings (informal) (Figs. 1-17)."

Because the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503, the Office concludes that 27 sheets of drawings, including Figures 13C and 13D, were filed on 11 September, 2001, and that the two sheets of drawings containing Figures 13C and 13D were subsequently misplaced in the Office.

Accordingly, the petition is **granted**.

The Notice of Omitted Items mailed on 2 November, 2001, is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 11 September, 2001, using the twenty-five (25) sheets of drawings filed on 11 September, 2001, and the two sheets of drawings containing Figures 13C and 13D supplied on 4 December, 2001, with an indication on the PALM bib data sheet that 27 sheets of drawings were present on filing.

Telephone inquiries concerning this matter may be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703)305-9199.

John J. Gillon, Jr.
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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAIL Paper No. 7

APR 2 3 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

MARY JO BERTANI
SKJERVEN MORRILL MACPHERSON LLP
25 METRO DRIVE, SUITE 700
SAN JOSE, CA 95110-1349

In re Application of :
Kadlec et al. :
Application No. 09/951,940 : DECISION ON REQUEST TO
Filed: September 10, 2001 : WITHDRAW AS ATTORNEY
For: SYSTEM AND METHOD FOR :
CONTROLLING FOCUS IN AN OPTICAL DISC :
DRIVE

This is a decision on the request to withdraw as attorney/agent of record filed on December 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.

The request is **GRANTED.**

All attorneys/agents associated with Customer No. 24,251 are granted the request for withdraw of attorney/agent. Customer No. 27,869 is not of record, and the Patent Office does not recognize withdrawal of a firm. 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: Alan MacPherson
MacPherson Kwok Chen & Heid LLP
2001 Gateway Place, Suite 195
San Jose, CA 95110

UNITED STATES PATENT AND TRADEMARK OFFICE

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ALEXANDRIA, VA 22313-1450
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Paper No. 9

SKJERVEN MORRILL LLP
25 METRO DRIVE
SUITE 700
SAN JOSE, CA 95110

MAIL

JUN 1 0 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of)
Kadlac, Ron J. et al.)
Application No. 09/951947)
Filed: September 10, 2001)
For: SYSTEM AND METHOD FOR CONTROLLING INTERRUPTS IN A CONTROL SYSTEM FOR AN OPTICAL DISC DRIVE)

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 24, 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/agents listed in customer numbers 24251 and 27869 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.

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

CC: Alan MacPherson
MACPHERSON KWOK CHEN & HEID LLP
2001 Gateway Place
Suite 195
San Jose, CA 95110

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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SEP 11 2009

OFFICE OF PETITIONS

ROBERT W. WILDER
4235 KINGSBURG DRIVE
ROUND ROCK, TX 78681

In re Application of :
Anthony E. MARTINEZ, et al. :
Application No. 09/951,950 : DECISION ON PETITION
Filed: September 13, 2001 : UNDER 37 CFR 1.181
Attorney Docket No. **AUS920010661US1** :

This is a decision on the petition, filed November 14, 2008, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely pay the issue and publication fees on or before October 14, 2008, as required by the Notice of Allowance and Fee(s) Due (Notice), mailed July 14, 2008.

Petitioner asserts that the Notice dated July 14, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Notice, and, in the absence of any irregularity, there is a strong presumption that the Notice was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. In this regard, the showing required to establish the failure to receive the Notice must consist of the following:

1. a statement from practitioner stating that the Notice was not received by the practitioner;

2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Notice was not received; and

3. a copy of the docket record where the non received Notice would have been entered and docketed had it been received must be attached to and referenced in the practitioner' statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).
The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

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

This application is being referred to the Technology Center AU 2192 technical support staff for **re-mailing** the Notice of Allowability and the Notice of Allowance and Fee(s) Due of July 14, 2008. The period for paying the issue and publication fees will be reset to expire three (3) months from the date the Notices are re-mailed. This period is not extendable under the provisions of 37 CFR 1.136.

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

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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IBM CORP (YA)
C/O YEE & ASSOCIATES PC
P.O. BOX 802333
DALLAS, TX 75380

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APR 19 2007

OFFICE OF PETITIONS

In re Application of :
Bryce Allen Curtis :
Application No. 09/951,951 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. AUS920010486US1 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 1, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 29, 2005, 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 March 1, 2006.

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

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

This matter is being referred to Technology Center AU 2194 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

cc: Jeffrey S. Labaw
IBM Intellectual Property Law
11400 Burnet Rd.
Austin, TX 78758

UNITED STATES PATENT AND TRADEMARK OFFICE

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INTERNATIONAL BUSINESS MACHINES CORPORATION
C/O HAMILTON & TERRILE, LLP
P.O. BOX 203518
AUSTIN, TX 78720

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MAR 0 2 2007

OFFICE OF PETITIONS

In re Application of	:	
Rabindranath Dutta et al	:	
Application No. 09/951,952	:	ON PETITION
Filed: September 13, 2001	:	
Attorney Docket No. AUS920010632US1	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 20, 2006, 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 January 14, 2005, 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 April 15, 2005.

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

This matter is being referred to Technology Center AU 2151 for further processing.

Irvin Dingle
Petitions Examiner
Office of Petitions

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Banner & Witcoff, Ltd.
1001 G Street, N.W.
Washington, DC 20001-4597

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NOV 2 1 2005

OFFICE OF PETITIONS

In re Application of
Orntoft et al.
Application No. 09/951,968
Patent No.: 6,936,417
Filed: September 14, 2001
Attorney Docket No. 006458.00001

: DECISION GRANTING PTA
:RECONSIDERATION

This decision is in response to Applicants' REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(d) timely[1] filed on September 16, 2005 requesting that the Office adjust the PTA determination from an adjustment of one hundred and seventy-seven (177) days to a determination of two hundred and eighty-nine (289) days.

Applicants request for reconsideration of PTA is granted. The Office will *sua sponte* issue a Certificate of Correction reflecting that the proper amount of PTA at the time of the issuance of the patent is two hundred and eighty-nine (289) days . In addition, the Office will adjust the PTA calculation exhibited in PAIR to reflect a determination of 289 days.

Applicants assert that the Office was correct in determining 350 days of Office delay by the Office for failing to issue the application within three years of the filing date of the application. In addition, applicants agree with the sixty-one day reduction for the submission of a reply more than three months after the mail date of the notice form the Office.[2] Applicants assert that the one hundred and twelve (112) days of applicant delay for the submission of a "miscellaneous incoming letter" on May 11, 2005 is in error. Applicants assert that the "miscellaneous incoming letter" was in fact an internal communication between the publication branch and the examiner concerning the application. Accordingly, applicants assert that the internal communication was not a failure by application to engage in reasonable efforts to conclude prosecution of the application under 37 CFR 1.704(c)(10).

Applicants arguments are persuasive. Specifically, the examiner notes that the Office errantly entered into the PALM record an incoming miscellaneous letter dated May 11, 2005. As suggested by applicants, the actual paper in question was a "printer rush" query (an internal communication) between the publication branch and the examination branch of the USPTO. Accordingly, the applicant did not submit a paper after the mail date of the notice of allowance

---

[1]Patent issue date was August 30, 2005

[2]The Office action mailed on August 12, 2003 was responded to on January 12, 2004, sixty-one day delay.

which violated 37 CFR 1.704(c)(10). Accordingly, the Office errantly entered the wrong code as a PALM content entry. The errant PALM entry triggered a one hundred and twelve day reduction of PTA. Applicants should not have been assessed this reduction. Accordingly, the correct amount of PTA at the time of the issuance of the patent is two hundred and eighty-nine (350-61=289) days.

After the mailing of this decision, this patented file will be forwarded to the certificate of correction branch for an issuance of a certificate.

The Office has assessed the $200.00 fee associated with this request for reconsideration of patent term adjustment. No additional fees are required by applicant in the consideration of this request.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, at 571-272-7757.

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

cc:draft certificate of correction
Adjusted Pair Calculation

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

POLLY C. OWEN
EASTMAN CHEMICAL COMPANY
P.O. BOX 522
KINGSPORT, TN 37662

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MAY 1 3 2003

OFFICE OF PETITIONS

In re Application of :
Thomas D. Roberts, et al :
Application No. 09/951,985 : ON PETITION
Filed: September 11, 2001 :
Attorney Docket No. 70075-06 :

This is a decision on the petition, filed April 10, 2003, 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 February 22, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. A Notice of Abandonment was mailed November 20, 2002.

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 1711 for consideration of the amendment filed April 10, 2003.

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

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Paper No. 19

HELLER EHRMAN WHITE & MCAULIFFE
1666 K STREET N.W.
SUITE 300
WASHINGTON DC 20006

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JUN 15 2004

OFFICE OF PETITIONS

In re Application of :
Ingrid Grummt et al :
Application No. 09/952,013 : DECISION GRANTING PETITION
Filed: September 14, 2001 : UNDER 37 CFR 1.55(c)
Attorney Docket No. 38485-0007 :

This is a decision on the petition filed June 18, 2003, under 37 CFR 1.55(c) requesting acceptance of an unintentionally delayed claim under 35 USC 119(a) through (d) for benefit of the filing date of foreign German Application No. DE 19911992.9, filed March 17, 1999.

A petition for acceptance of a claim for foreign priority under 37 CFR 1.55(c) is only applicable to those applications filed on or after November 29, 2000. Further, the nonprovisional application must be filed within 12 months of the filing date of the foreign application. In addition, a petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a)-(d) must be accompanied by:

> (1) the claim under 35 U.S.C. §119(a)-(d) to the prior foreign application, unless previously submitted;[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 and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed after November 29, 2000, and did not include a reference to the foreign application, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. Therefore,

---

[1] The claim must identify in the oath or declaration the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country, and the filing date. *Note* also 37 CFR 1.63(c)(2).

since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The above-identified pending nonprovisional application was filed on September 14, 2001, which is after November 29, 2000. Intermediate PCT Application No. PCT/DE00/00767, filed March 8, 2000, was filed within 12 months of March 17, 1999, (the filing date of the foreign application to which benefit is now being claimed). On July 18, 2002, an executed oath/declaration was received which identifies the foreign application for which priority is claimed by application number, country and filing date. The required petition fee of $1300 was received with the petition. Lastly, petitioner has provided an adequate statement of unintentional delay.

All requirements being met, the petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a) through (d) is **granted.**

A filing receipt accompanies this decision on petition.

This application is being forwarded to Technology Center AU 1636 for consideration by the examiner of record of the foreign priority claim under 35 U.S.C. § 119(a) through (d) and 37 CFR 1.55(c) and for consideration of the amendment filed October 22, 2003.

Any inquiries directly pertaining to this matter may be directed to the undersigned at (703) 305-8859.

Karen Creasy

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

ATTACHMENT: Filing Receipt

SPE K. Shah

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5/8/06

Paper No.: _____

TO SPE OF : ART UNIT 2128

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/952022 Patent No.: 7027665

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: Applicant is re-submitting COCIN to include missing cols & line #s that errors still appear.

_____

_____

_____

_____ 2128

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 : 06/02/06

Patent No. :7027965 B2
Patent Issued : 04/11/06
Docket No. : **73-00**

Re: Request for Certificate of Correction

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

Respecting the alleged errors in the documents filed on 04/28/06, please see attachment. **"Therefore, no correction(s) is in order here under United States Codes (U.S.C.) 254 and the Code of Federal Regulation (C.F.R.) 1322."**

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

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

GREENLEE WINNER AND SULLIVAN P C
4875 PEARL EAST CIRCLE
SUITE 200
BOULDER CO 80301

LMN

SPE K. Shah

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 5/8/06

Paper No.: _____

TO SPE OF : ART UNIT 2128

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/952022 Patent No.: 7022865

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

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

Comments: Applicant is re-submitting COCIN to include missing cols & line #s that errors still appear.

SPE

2128
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, VA 22313-1450
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WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW SUITE 700
WASHINGTON DC 20036

COPY MAILED
JUN 0 2 2006
OFFICE OF PETITIONS

In re Application of :
Teramachi et al. :
Application No. 09/952,030 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. 011204 :

This is decision on the petition under 37 CFR 1.181, filed April 25, 2006, to withdraw the holding of abandonment.

On May 4, 2005, the Office mailed a nonfinal Office Action, which set a three month shortened statutory period for reply. In the apparent absence of a timely filed response, the Office mailed a Notice of Abandonment on December 29, 2005.

In the present petition, petitioners asserted that they filed a timely response to the nonfinal Office Action in the form of a Request for Reconsideration. A review of the record indicates that the USPTO did not receive the Request for Reconsideration. However, petitioners submitted a copy of the Request for Reconsideration with the petition, which contains a certificate of facsimile transmission to 703-872-9306[1] and dated August 4, 2005. Therefore, petitioners are relying of the certificate of facsimile transmission as evidence of the timely filing of the Request for Reconsideration on August 4, 2005. The Office notes that 37 CFR 1.8(b) and MPEP 512 apply in the situation where a petitioner relies upon on a certificate of facsimile transmission under 37 CFR 1.8, but not a postcard receipt, in a petition to withdraw the holding of abandonment. See MPEP 711.03(c)(I)(B).

Pursuant to 37 CFR 1.8:

> (b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to

[1] On July 15, 2005, the Central Facsimile (FAX) Number was changed from 703-872-9306 to 571-273-8300. Faxes sent to the previous number were routed to the new number until September 15, 2005.

> be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
>
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
>
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Furthermore, as stated in MPEP 512(IV):

> If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission. Such a statement should be filed promptly after the person becomes aware that the Office has not received the correspondence.

In the present petition, petitioners did not provide a statement under 37 CFR 1.8(b)(3), attesting to a personal knowledge of the mailing of the original response on the date indicated on the certificate by the person who signed the certificate (*i.e.*, Kristin A. Linn). Additionally, John P. Kong did not explain how he had firsthand knowledge of the previous timely mailing or transmission.

Accordingly, the petition to withdraw the holding of abandonment is **dismissed**. Before the Office can withdraw the holding of abandonment, petitioner must submit a request for reconsideration and a response in compliance with 37 CFR 1.8(b)(3). A request for reconsideration of this decision must be submitted with TWO (2) MONTHS of the mailing date of this decision. Extensions of this time period may be granted under 37 CFR 1.136. The request for reconsideration should include a cover sheet entitled "Renewed Petition Under 37 CFR 1.181."

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

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

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

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

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

Christina T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
1250 CONNECTICUT AVENUE, NW SUITE 700
WASHINGTON DC 20036

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AUG 1 1 2006
OFFICE OF PETITIONS

In re Application of :
Teramachi et al. :
Application No. 09/952,030 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. 011204 :

This is decision on the renewed petition under 37 CFR 1.181, filed July 18, 2006, to withdraw the holding of abandonment.[1]

On May 4, 2005, the Office mailed a nonfinal Office Action, which set a three month shortened statutory period for reply. In the apparent absence of a timely filed response, the Office mailed a Notice of Abandonment on December 29, 2005.

Petitioners asserted that they filed a timely response to the nonfinal Office Action in the form of a Request for Reconsideration via facsimile transmission on August 4, 2005.[2] A review of the record indicates that the USPTO did not receive the Request for Reconsideration. In support of the assertion, petitioners submitted the following: (1) a copy of the Request for Reconsideration showing a

[1] The original petition was dismissed by the decision of June 2, 2006.

[2] Pursuant to 37 CFR 1.8:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

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

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

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

certificate of facsimile transmission to 703-872-9306[3] and dated August 4, 2005; (2) a copy of the Auto Reply Facsimile Transmission;[4] and, (3) a copy of the facsimile report.[5] With the renewed petition, petitioners submitted the statement of Kristin A. Lin, the person who signed the certificate,[6] attesting to a personal knowledge of the transmission of the original response on the date indicated on the certificate of facsimile transmission.

After reviewing the documents submitted with the renewed petition, the Office considers that the response to the nonfinal Office Action in the form of a Request for Reconsideration was filed timely by facsimile transmission on August 4, 2005.

Accordingly, the petition to withdraw the holding of abandonment is **granted** in light of the timely transmission of the reply on August 4, 2005.

This matter is being referred to Technology Center Art Unit 3682 to enter the reply submitted on August 4, 2005, and for consideration of the response by the examiner.

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

C. T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

---

[3] On July 15, 2005, the Central Facsimile (FAX) Number was changed from 703-872-9306 to 571-273-8300. Faxes sent to the previous number were routed to the new number until September 15, 2005.

[4] It is noted that the current rules and edition of the MPEP do indicate that a copy of the Auto-Reply Facsimile Transmission only is prima facie evidence of receipt of a document in the USPTO. To establish timely receipt in the USPTO, the Office will accept a showing under 37 CFR 1.8 and 1.10, as well as an itemized date-stamped postcard receipt.

[5] The Office notes that if the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used **to support [the 1.8(b)(3)] statement.**

[6] If the person signing the statement did not sign the certificate of mailing, **then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission.**

UNITED STATES PATENT AND TRADEMARK OFFICE

JAN 26 2007

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

ELAN DRUG DELIVERY, INC.
C/O FOLEY & LARDNER LLP
3000 K STREET, N.W.
SUITE 500
WASHINGTON DC 20007-5109

In re Application of	:
Elaine Liversidge et al	:
Serial No.: 09/952,032	: PETITION DECISION
Filed: September 14, 2001	:
Attorney Docket No.: 029318-0104	:

This is in response to the petition under 37 CFR 1.181, filed November 20, 2006, requesting restarting of the period for response.

A review of the history of this application shows that all Office communications up to the mailing of an Advisory Action on June 4, 2004, were mailed to the above firm at the above address. On July 23, 2004, a change of correspondence address was entered in the file. A review of that paper shows that it should have been entered in SN 09/592,032. Upon entry of the paper, the correspondence address was changed to NOVO NORDISK Pharmaceuticals. Following the filing of the Appeal Brief, an Examiner's Answer was mailed to Novo Nordisk. It appears applicants obtained a copy of the Examiner's Answer, mailed February 11, 2005, and filed a Reply Brief on April 11, 2005, but failed to provide any corrected address information. Following a Remand from the Board a Notice of Defective Brief was mailed to applicants at the Novo Nordisk address on November 18, 2005.

As stated by applicants, a copy of the Notice was not obtained by them until November 16, 2005, following a telephone call on that date. Applicants have replied to the Notice expeditiously. In view of the fact that the address error was occasioned by an incorrect Office entry, the period for replying to the Notice of Defective Brief is reset to begin as of the date of receipt of the notice by applicant, November 16, 2006.

The petition is **GRANTED.**

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

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

Bruce M. Kisliuk
Director, Technology Center 1600

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

PARSONS, BEHLE & LATIMER
Suite 1800
201 South Main Street
P.O. Box 45898
Salt Lake City, UT 84145-0898

COPY MAILED

JAN 2 8 2003

OFFICE OF PETITIONS

In re Application of
Tony M. Pearce
Application No. 09/952,035
Filed: September 11, 2001
Attorney Docket No. 5055 P

DECISION ON PETITION

This is a decision on the petition filed September 9, 2002, 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 to the "Notice to File Missing Parts of Application" mailed November 16, 2001. This 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. No reply having been received, the above-identified application became abandoned on January 17, 2002. The filing of the instant petition precedes the mailing of a courtesy "Notice of Abandonment."

Petitioner has satisfied the requirements of 37 CFR 1.137(b). Accompanying the instant petition were the outstanding statutory filing and claim fees; an executed declaration; and the surcharge for late filing of the declaration under 37 CFR 1.16(e), the replies requested in the above-identified notice. Petitioner also submitted the petition fee and made 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.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing, including processing of the replies to the Notice to File Missing Parts filed September 9, 2002.

Telephone inquiries specific to 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
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6825769
Issue Date: November 30,2004
Application No. 09952058
Filed: September 14,2001
Attorney Docket No. US 010417

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

This is a decision on the electronic petition, filed June 2,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of June 2,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

NXP, B.V.
NXP INTELLECTUAL PROPERTY DEPARTMENT
M/S41-SJ
1109 MCKAY DRIVE
SAN JOSE CA 95131

COPY MAILED

FEB 18 2009

OFFICE OF PETITIONS

In re Application of :
Kang et al. :
Application No. 09/952,059 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. NL 000521 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed July 7, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2))within the time period provided in 37 CFR 41.37(a)(1). No extensions of time under the provisions of 37 CFR 1.136(b) were obtained. As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal dated June 13, 2007, 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 August 14, 2007. *See* MPEP 1215.04. A Notice of Abandonment was mailed March 26, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an Appeal Brief and fee of $510.00; (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay.

It is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must notify the Office. It is not apparent whether the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute this patent. In accordance with 37 CFR 1.34(a), the signature appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. 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 Joan Olszewski at (571) 272-7751.

This application is being referred to Technology Center AU 2182 for appropriate action by the Examiner in the normal course of business on the reply received.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

cc: Mark A. Wilson
PMB: 348, 2530 Berryessa Road
San Jose, CA 95132

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

MICHAEL L GOLDMAN
NIXON PEABODY
CLINTON SQUARE
P.O. BOX 31051
ROCHESTER, NY 14603

COPY MAILED

JAN 2 9 2002

OFFICE OF PETITIONS

In re Application of
Michael Levene et al
Application No. 09/952,062
Filed: September 14, 2001
Attorney Docket No. 19603/3520(CRF D-2721)

DECISION GRANTING PETITION

This is a decision on the petition under 37 CFR 1.10(c) filed January 3, 2002, which is properly treated as a petition under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of September 14, 2001, rather than the presently accorded filing date of September 15, 2001.

Applicants request the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail on September 14, 2001, pursuant to the requirements of 37 CFR 1.10. In support, applicants provided, inter alia, a copy of the Express Mail label, receipt no. EL709321103US. The same Express Mail receipt number appears on the copy of the original transmittal letter submitted with the present petition. It is noted that while the "date-in" on the copy of the Express Mail receipt was left blank, it includes a "Rochester NY Mid Town USPS" receipt stamp dated "September 14, 2001".

In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on September 14, 2001.

The petition is granted.

The application is being returned to Initial Patent Examination Division to await applicants' response to the Notice mailed October 29, 2001, and for correction of the filing date to September 17, 2001.

Telephone inquiries 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

SPE: N. MOAZZAMI

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/5/07

TO SPE OF : ART UNIT 2136

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/952,103 Patent No.: 7167982

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

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

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

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

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

Note your decision on the appropriate box.

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

Comments: _____

NASSER MOAZZAMI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2136
Art Unit

PTO/SB/44 (04-05)
Approved for use through 04/30/2007. OMB 0651-0033
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.
(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,167,982 B2

APPLICATION NO.: 09/952,103

ISSUE DATE : January 23, 2007

INVENTOR(S) : Elliott et al.

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

Claim 2, Column 9, line 29, delete "steps" and insert --step--;

Claim 8, Column 9, line 58, delete "step" and insert --steps--;

MAILING ADDRESS OF SENDER (Please do not use customer number below):

Lenovo (United States) Inc.
3039 Cornwallis Road
Research Triangle Park, NC 27709

This collection of information is required by 37 CFR 1.322, 1.323, and 1.324. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Attention Certificate of Corrections Branch, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper 8

FAEGRE & BENSON LLP
2200 WELLS FARGO CENTER
90 SOUTH 7TH STREET
MINNEAPOLIS MN 55402

COPY MAILED

JUN 15 2004

OFFICE OF PETITIONS

In re Application of :
Todd A. Krinke :
Application No. 09/952,121 : ON PETITION
Filed: September 11, 2001 :
Attorney Docket Number: 17310-239198 :

This is a decision on the petition filed by facismile transmission on April 30, 2004, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513.

The petition is **GRANTED**.

This application became abandoned on October 28, 2003, after the applicant failed to timely file a proper reply to the non-Final Office Action mailed September 25, 2003. A Notice of Abandonment was mailed on March 17, 2004.

Petitioner asserts that the non-Final Office Action was never received.

The file record discloses that the non-Final Office Action was mailed to the address of record which is the same address used on all correspondences from the USPTO including the Notice of Abandonment. Petitioner has provided a copy of the file folder for this specific application, which is used for docketing purposes, wherein receipt of the Notice of Allowance and Notice of Allowability mailed September 25, 2003 would have been filed, had it been received. Petitioner also documents the procedures used for handling of USPTO correspondence in an effort to show that the Notice mailed September 25, 2003 was not received.

In that the statement from the petitioner and the exhibit from the docket record for the instant matter show no entry indicating receipt of the non-Final Office Action was mailed September 25, 2003, it is apparent that the Office Action was not received. The evidence submitted corroborates non-receipt of the Office Action.

In view of the facts set forth in the petition, it is concluded that the Notice of Allowance and Notice of Allowability was never received at the address of record. Accordingly, the holding of abandonment is withdrawn and the Notice of Abandonment is vacated. No

petition fee Is due and thus, the petition fee in the amount of $130.00 will be credited to deposit account no. 06-0029.

The file is being forwarded to Technology Center 2653 for the remailing of the non-Final Office Action originally mailed on September 25, 2003. Telephone inquiries concerning the remailing of the Notices should be referred to the Technology Center. All other inquiries regarding this decision may be directed to the undersigned Petitions Attorney at (703) 305-4497.

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
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Paper 6

THOMAS T. MOGA
DICKINSON & WRIGHT PLLC
1901 L . STREET N.W.
SUITE 800
WASHINGTON DC 20036

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MAY 1 4 2004

OFFICE OF PETITIONS

In re Application of
Schiao-Chien Chen et al.
Application No. 09/952,125
Filed: September 14, 2001
Attorney Docket No. 46602.11116

ON PETITION

This is a decision on the petition filed by facsimile transmission on May 5, 2004 under 37 CFR 1.137(a)[1], to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned December 3, 2001 for failure to timely respond to the Notice to File Missing Parts mailed October 2, 2001. No requests for extensions of time having been filed, a Notice of Abandonment was mailed January 21, 2004.

A review of the record reveals that 1) the reply included a certificate of mail dated October 25, 2001, pursuant to 37 CFR 1.8 and 2) that on January 9, 2002 the response was in fact received in the USPTO. However, the declaration and power of attorney has not been associated with the file.

Receipt of the declaration and power of attorney in response to the Notice to File Missing Parts and all other requirements having been met, this application is being forwarded to the Office of Initial Patent Examination for further pre-examination processing

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

[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);

(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)).

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Alexandria, VA 22313-1450
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JOHN S. NAGY
FULWIDER, PATTON, LEE & UTECHT LLP
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 99045

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NOV 0 8 2005

OFFICE OF PETITIONS

In re Application of :
Lilip Lau et al :
Application No. 09/952,145 : DECISION ON PETITION
Filed: September 10, 2001 : UNDER 37 CFR 1.313(a)
Attorney Docket No. PARCR 65596 :

This is a decision on the petition under 37 CFR 1.313(a), filed December 13, 2004, requesting withdrawal of this application from issue.[1]

The petition is dismissed.

Petitioner requests withdrawal of this application from issue because certain pieces of prior art were not initialed by the Examiner. Petitioner further states that there was no reference in the Notice of Allowance nor in the Notice of Allowability that there were any problems with the prior art as submitted. As such, the application was allowed without review of the art submitted by applicant. In order to remove any doubt as to whether the prior art was reviewed, petitioner indicates a continuation application (No. 11/008,733) has been filed.

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 is necessary.

The petition fails to set forth a good and sufficient reason which would necessitate withdrawal of this application from issue, since this issue could have been resolved without withdrawing the application from issue. Further, as this application is abandoned for failure to timely pay the issue and publication fees and submit corrected formal drawings as required by the Notices mailed October 28, 2004, the request for withdrawal from issue is now moot.

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

Frances Hicks
Petitions Examiner
Office of Petitions

[1] The Office sincerely apologizes for the delay in replying to the instant petition and any inconvenience caused petitioner by this delay.

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IP STRATEGIES
12 1/2 WALL STREET
SUITE I
ASHEVILLE, NC 28801

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OFFICE OF PETITIONS

In re Application of Whittaker et al. :
Application No. 09/952,208 : Decision on Petition
Filing Date: September 12, 2001 :
Attorney Docket No. FITPT01 :

This is a decision on the petition under 37 CFR 1.181, filed August 11, 2006, to withdraw the holding of abandonment.

The petition is **granted.**

The above-identified application was deemed abandoned for failure to reply in a timely manner to the Notice of Non-Compliant Amendment mailed April 5, 2006, which set a shortened statutory period for reply of one (1) month or thirty (30) days (whichever is later). An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the application was deemed abandoned as of May 6, 2006. A Notice of Abandonment was mailed August 9, 2006.

Petitioner has established the Notice of Non-Compliant Amendment was never received. Therefore, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 2136 will be informed of the instant decision. Thereafter, the Technology Center's support staff will mail a new Notice of Non-Compliant Amendment. The time period for responding to the new Notice will be set to run from the mailing date of the new Notice.

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

Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Technology Center 1700.

Mailed: 11-30-05

rvk
Paper No. _____

In re application of:
Heinz-Joschim Rother et al
Serial No.: 09/952,252
Filed: September 13, 2001
For: ACTIVE COMPOUND COMBINATIONS FOR PROTECTING ANIMAL HIDES AND LEATHER

DECISION ON PETITION

This is a response to the PETITION TO REVIVE UNDER 37 CFR 1.181, filed June 29, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 13, 2005, for failure to timely file a proper response to the Office letter dated February 08, 2005 be withdrawn. The petitioner asserts that applicants timely filed a proper response on February 11, 2005.

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 February 08, 2005(i.e. Non-Compliant Amendment Communication) in a timely manner. The evidence provided includes a copy of the Response dated February 11, 2005 to the Non-Compliant Amendment Communication and a copy of the Auto-Reply Facsimile Transmission confirming receipt of the Response by the USPTO dated February 11, 2005.

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 February 11, 2005 and then forwarded to the examiner for prompt consideration.

The Petition is **GRANTED.**

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

LANXESS CORPORATION
111 RIDC PARK WEST DRIVE
PITTSBURGH, PA 15275-1112

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COATS & BENNETT, PLLC
1400 Crescent Green, Suite 300
Cary NC 27518

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OFFICE OF PETITIONS

In re Application of:
DENT, Paul W.
Application No.: 09/952,272
Filed: September 12, 2001
Attorney Docket No.: 4015-982

DECISION APPROVING
WITHDRAWAL OF ATTORNEY

This is a decision on the Request to Withdraw as Attorney/Agent of Record under 37 CFR § 1.36, filed October 2, 2008.

The Request is **APPROVED**.

Debra K. Stephens requests that she alone be withdrawn as an attorney under 37 CFR § 1.36, pursuant to the reason set forth under 37 CFR § 10.40(b)(2), because of her current employment by the United States Patent and Trademark Office. Since the Request satisfies all of the requirements for withdrawal, it is appropriate to approve the Request and withdraw only Ms. Stephens as an attorney of record.

All future communications from the Office will continue to be directed to the above-identified correspondence address.

A courtesy copy of this decision is being mailed to Ms. Stephens at the address identified in the Request.

Telephone inquiries relating to this decision should be directed Brian W. Brown at (571) 272-5338.

Brian W. Brown
Petitions Examiner
Office of Petitions

Cc: Debra K. Stephens
301 Edgemore Avenue
Cary, NC 27519

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

STEVEN L. HIGHLANDER
FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVENUE, SUITE 2400
AUSTIN, TX 78701

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OFFICE OF PETITIONS

In re Application of :
Craig B. Thompson et al. :
Application No. 09/952,278 :
Filed: September 12, 2001 :
Attorney Docket No. ARCD:090USD3/SLH :

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 the Initial Patent Examination Unit.

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

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Paper No. 7

STEVEN L. HIGHLANDER
FULBRIGHT & JAWORSKI LLP
600 CONGRESS AVENUE, SUITE 2400
AUSTIN, TX 78701

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JUL 1 2 2002

OFFICE OF PETITIONS

In re Application of :
Craig Thompson et al :
Application No. 09/952,278 :
Filed: September 12, 2001 :
Attorney Docket No. IOWA:029USD2 :

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

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NOV 22 2004

Paper No. 9

Charles H. DeVoe
Kolisch, Hartwell, Dickinson, McCormack & Heuser
Suite 200
520 S.W. Yamhill Street
Portland, OR 97204

In re Application of	:	DECISION ON PETITION
Seiji Shimazaki	:	TO WITHDRAW
Serial No. : 09/952,298	:	HOLDING OF
Filed : September 12, 2001	:	ABANDONMENT
For : Combined Container-Syringe and Assembly Method of the Same	:	

This is a decision on a request filed September 20, 2004, to review the holding of abandonment mailed August 24, 2004 for failure to respond to the Office action mailed November 21, 2003. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of a response and a copy of a PTO stamped receipt dated February 26, 2004 as evidence of the timely filing of a response. The response received February 26, 2004 included a certificate of mailing Dated February 23, 2004 (the 21st of February being a Saturday).

In view of the above, the Notice of Abandonment mailed August 24, 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 February 26, 2004 as well as the supplemental amendment filed April 15, 2004.

Summary: Holding of Abandonment Withdrawn.

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

ak/10/19/04

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JJGJr: 04-04

Paper No: 11

FRANCIS J. SWEENEY
CATEX
475 WALL ST.
PRINCETON NJ 08540

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APR 30 2004
OFFICE OF PETITIONS

In re Application of:	:	ON PETITION
Sweeney	:	
Filed: 14 September, 2001	:	
Application No. 09/952,299	:	
Docket No.: 4677-105	:	

This is a decision on the petition filed herein on 16 April, 2004, under 37 C.F.R. §1.137(b) to revive the above-identified application.

For the reasons set forth below, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record indicates that:

- Petitioner failed to reply timely and properly to the Notice to File Missing Parts (signed oath/declaration) mailed on 12 October, 2001, and due absent extension of time on or before Wednesday, 12 December, 2001;
- the application was deemed abandoned after midnight 12 December, 2001;
- Notice of Abandonment was mailed on 10 November, 2003;
- Petitioner/Applicant *pro se* (Petitioner) details that the business to which the instant application was assigned suffered financial reversals and could not afford the costs of attorney's fees associated with the prosecution of the application;

- Petitioner failed to file the reply (the required oath or declaration with the required $65.00 surcharge) and failed to satisfy the showing requirement, therefore the original petition was dismissed on 16 December, 2003;

- a second petition was filed on 2 February, 2004, but with insufficient petition fees and without the $65.00 surcharge as specified in the Notice 12 October, 2001, Notice of Missing Parts, and was dismissed on 20 February, 2004;

- with the instant petition, Petitioner satisfies the regulatory requirements, including "fee," "reply," and "statement.".

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]

And the Petitioner must be diligent in attending to the matter.[3] 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.[4]))

---

[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: 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.

[4] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Allegations as to Unintentional Delay

Petitioner has satisfied the requirements of the regulation.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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Paper No. 7

STEUBING AND MCGUINESS & MANARAS LLP
125 NAGOG PARK
ACTON, MA 01720

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AUG 1 0 2004

OFFICE OF PETITIONS

In re Application of :
Thomas P. Hardjono, et al. :
Application No. 09/952,328 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 13460BAUS01U :

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed October 16, 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 17, 2001.

It is also noted that the petition, including the statement of unintentional delay, was intended to be signed by applicant's registered attorney, Lindsay McGuinness; however, the statement is not signed. Since the certificate of mailing transmission found in the petition includes a signature by counsel, the signature on the certificate of mailing will be construed as the necessary ratification of the unsigned petition and statement of unintentional delay.

The Change of Correspondence Address has been accepted and recorded.

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

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

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ELSA KELLER, LEGAL ASSISTANT
INTELLECTUAL PROPERTY DEPARTMENT
SIEMENS CORPORATION
186 WOOD AVENUE SOUTH
ISELIN NJ 08830

MAILED

MAR 05 2009

OFFICE OF PETITIONS

In re Application of :
David Dubovsky :
Application No. 09/952,341 : DECISION ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. 2001 P 12995 US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 2, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice of Allowance mailed August 29, 2008, 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 the undersigned at (571) 272-3208.

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

Karen Creasy
Petitions Examiner
Office of Petitions

cc:

CHARLES W. PETERSON, JR.
435B CARLISLE DRIVE
HERNDON, VA 20170

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JJGJR.: 06-06

Paper No:__

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2200 IDS CENTER
80 SOUTH 8TH ST
MINNEAPOLIS MN 55402

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JUN 22 2006

OFFICE OF PETITIONS

In re Application of :
Brinton, et al. : DECISION
Application No. 09/952,365 :
Filing Date: 11 September, 2001 :
Attorney Docket No.: 16836-102 :

This is a revised decision on the petition filed on 22 August, 2005, alleging unavoidable delay under 37 C.F.R. §1.137(a).

The Office regrets the delay in addressing this matter–it was received in the Office of Petitions only as of this writing.

For the reasons set forth below the petition under 37 C.F.R. §1.137(a) is **DISMISSED as moot**; the petition fee is waived and has not been charged.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to a Pre-Exam Notice mailed on 12 October, 2001, with reply due absent extension of time on or before the due date set therein;

- from the incomplete image file wrapper (IFW), the specific date of abandonment is not

evident, however, the Office mailed the Notice of Abandonment on 13 December, 2001;

- PALM indicates that he pre-exam abandonment (13 December, 2001), was withdrawn on 6 August, 2003;

- again, the incomplete state of the IFW does not permit an itemization of communications, however, a review of the information available on IFW and PALM clearly indicate Petitioner's on-going efforts to respond to the Office and obtain information on and expedite prosecution of the instant application in 2003, 2004 and 2005, culminating in the filing of the instant petition on 22 August, 2005;

- further confounding matters, on 9 September, 2005, OIPE mailed a Notice withdrawing "the Notice of Abandonment mailed on 08/06/2003"–clearly there was no Notice of Abandonment mailed that date;

- however, it appears from PALM that the application has been reconstructed and dispatched from OIPE, and is pending.

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

---

[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).

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]))

As to Allegations
of Unavoidable Delay

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.

CONCLUSION

The petition under 37 C.F.R. §1.137(a) is **dismissed as moot**.

The instant application is released to OIPE for such processing as may be required 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

---

[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.

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MAY 22 2009

OFFICE OF PETITIONS

In re Application of :
Brinton, et al. :
Application No. 09/952,365 : ON PETITION
Filed: September 11, 2001 :
Attorney Docket No. 34263.2

This is a decision on the petition under 37 CFR 1.137(a), filed May 7, 2009, to revive the above-identified application.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

The above-identified application became abandoned for failure to reply to the Notice of Non-Compliant Amendment mailed August 21, 2008, which set a shortened period for reply of one-month (1) month from its mailing date. No response was received within the allowable period, and the application became abandoned on September 22, 2008. A Notice of Abandonment was mailed on April 1, 2009.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition lacks item (3).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

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[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that the Notice of Non-Compliant Amendment was not received.

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reasons petitioner's argument must necessarily fail are addressed below.

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

> 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.

Petitioner is required to provide a master docket for the firm that shows all replies docketed for a date one month from the mail date of the Notice of Non-Compliant Amendment. As indicated above, if a master docket does not exist, the renewed petition should so state and reference the docket record for the subject application.

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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.

mail date of the nonreceived Office action as required by MPEP 711.03(c) cited above. The renewed petition must be accompanied by the portion of the master requested.

Alternatively, petitioner may revive the application based on unintentional abandonment under 37 CFR 1.137(b) (enclosed). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply, the required petition fee ($1,620.00 for a large entity and $810.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

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

By mail: Commissioner for Patents
United States Patent and Trademark Office
Box 1450
Alexandria, VA 22313-1450

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

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

Kenya A. McLaughlin
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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BRIGGS AND MORGAN P.A.
2200 IDS CENTER
80 SOUTH 8TH ST
MINNEAPOLIS MN 55402

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JUL 20 2009

OFFICE OF PETITIONS

In re Application of	:	
BRINTON, Marshall K. et al.	:	
Application No. 09/952,365	:	DECISION ON PETITION
Filed: September 11, 2001	:	
Attorney Docket No. **34263.2**	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 12, 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 Notice of Non-Compliant Amendment Office action mailed, August 21, 2008, which set a shortened statutory period for reply of one (1) month. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on September 22, 2008.

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. Accordingly, the reply to the Notice of Non-Compliant Amendment Office action of August 21, 2008 is accepted as being unintentionally delayed.

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

This application is being referred to Technology Center AU 3711 for appropriate action on the concurrently filed amendment.

Ramesh Krishnamurthy

Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

Paper No. 13

MAIL

JUN 14 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Dravida, et al.
Application No. 09/952,374
Filed: September 13, 2001
For: BROADBAND SYSTEM WITH INTELLIGENT NETWORK DEVICES

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed April 08, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111(b) and (c), how the claimed subject matter is patentable over the references.

The petition fails to meet requirement (4), (5) and (6) above, inasmuch as there is no description of the classes or subclasses that were searched, and no discussion of the references has been made. Furthermore, details of any text searches used absent a class/subclass search have not been provided.

Accordingly, the petition is **DENIED**.

Petitioner may submit a request for reconsideration within **TWO MONTHS** of the date of this decision. Any request for reconsideration should include a complete description of the search method employed, such as classes and subclasses searched, a description of text searches used, etc. The application file will be held in the Technology Center to await a request for reconsideration.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

In re Application of:
Dravida, et al.
Application No. 09/952,374
Filed: September 13, 2001
For: BROADBAND SYSTEM WITH INTELLIGENT NETWORK DEVICES

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the renewed petition filed August 16, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111(b) and (c), how the claimed subject matter is patentable over the references.

The petition now meets the requirements as set forth above.

Accordingly, the petition is **GRANTED**.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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MORGAN, LEWIS & BOCKIUS, LLP.
2 PALO ALTO SQUARE
3000 EL CAMINO REAL
PALO ALTO CA 94306

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JUL 15 2005

OFFICE OF PETITIONS

In re Patent No. 6,818,683
Hassan Bodaghi
Issue Date: November 16, 2004
Application No. 09/952,380
Filed: September 15, 2001
Attorney Docket No. 025700-019CIP

: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 under 37 CFR 1.705(d)" received in the Office January 18, 2005. Patentees request that the patent term adjustment indicated on the patent be corrected from twenty-four (24) to eighty-one (81)days.

The request for reconsideration of the patent term adjustment indicated on the patent 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 eighty-one **(81)**days.

On November 16, 2004, the above-identified application matured into U.S. Patent No. 6,818,683. The instant request for reconsideration filed January 18, 2005 was timely filed within two months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 24 days. Patentee states that the initial determination of patent term adjustment of 81 days should not have been reduced by 57 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the only paper filed after the mailing of the Notice of Allowance was a copy of a change of address previously filed July 30, 2004.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be

considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 57 days was based on the filing after allowance of a copy of a previously filed change of address on July 30,2004. Thus, it is concluded that the patent term adjustment should not have been reduced by 57 days.

Furthermore, there were no other bases for reduction of the patent term adjustment.

In view thereof, the patent term adjustment indicated on the patent should have been eighty-one **(81)**days.

The $200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 50-0310, as authorized. 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. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by eighty-one **(81)** days.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571-272-3212.

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

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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NOVAK DRUCE & QUIGG, LLP
1300 EYE STREET NW
400 EAST TOWER
WASHINGTON DC 20005

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OFFICE OF PETITIONS

In re Application of :
Carlsson et al. :
Application No. 09/952,383 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No.: 02303.0002.PCUS00 :
:

This is a decision on the "Request/ Petition to Correct Indication of Claimed Foreign Priority Under 35 USC §119", filed July 5, 2005. This petition is properly treated as a petition under 37 CFR 1.55 (a)(2).

The petition is **GRANTED**.

Petitioner submitted the issue fee on February 14, 2005. However, petitioner did not inform the Office where the certified copy of the foreign application could be located until after submission of the issue fee.

Pursuant to 37 CFR 1.55 (a)(2) the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by the processing fee set forth in § 1.17(i).

Petitioner asserts that the certified copy of the priority document has been previously submitted in serial No. 09/483,478 now patent 7,025,021.

Pursuant to petitioner's request deposit account no. 14-1347 will be charged the $130.00 processing fee.

It is noted that the Patent may not include the claim for priority unless corrected by a certificate of correction under 35 U.S.C. 255 and 37 CFR 1.323.

Telephone inquiries related to this decision may be directed to Charlema R. Grant at (571) 272-3215.

Frances Hicks
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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BEAVERTON, OR 97008

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FEB 27 2008

OFFICE OF PETITIONS

In re Application of
Kenneth L. Levy
Application No. 09/952,384
Filed: September 11, 2001
Attorney Docket No. P0435

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the petition under 37 CFR 1.78(a)(3), filed February 28, 2007, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not satisfy item (1) above.

The reference to add the above-noted, prior-filed applications in the first sentence of the specification on page one following the title is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. An incorporation by reference statement added after an application's filing date is not effective because no new matter can be added to an application after its filing date (*see* 35 U.S.C. § 132(a)). If an incorporation by reference statement is included in an amendment to the specification to add a benefit claim under 35

U.S.C. § 120 after the filing date of the application, the amendment would not be proper. When a benefit claim under 35 U.S.C. § 120 is submitted after the filing of an application, the reference to the prior application cannot include an incorporation by reference statement of the prior application. *See* Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980). *Note* MPEP §§ 201.06(c) and 608.04(b).

If reconsideration of this decision is desired, a renewed petition under 37 CFR § 1.78(a)(3) and an Application Data Sheet or an amendment (complying with the provisions of 37 CFR 1.121 and 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 Andrea Smith at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

David Bucci
Petitions Examiner

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United States Patent and Trademark Office
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AUG 2 7 2008

OFFICE OF PETITIONS

In re Application of
Kenneth L. Levy
Application No. 09/952,384
Filed: September 11, 2001
Attorney Docket No. P0435

DECISION ON PETITION
UNDER 37 CFR 1.78(a)(3)

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed March 7, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application set forth in the amendment filed on February 28, 2007.

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 Director may require additional information where there is a question whether the delay was unintentional.

Since all of the above requirements have been satisfied, the late claim for priority under 35 U.S.C. § 120 is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that this application is entitled to the benefit of the prior-filed application. In order for this application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed nonprovisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center Art Unit 2162, for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3226. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

Andrea Smith
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
09/952,384	09/11/2001	2162	1270	P0435	18	2

CONFIRMATION NO. 7506

CORRECTED FILING RECEIPT

23735
DIGIMARC CORPORATION
9405 SW GEMINI DRIVE
BEAVERTON, OR 97008

OC000000031785983

Date Mailed: 08/27/2008

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

Kenneth L. Levy, Stevenson, WA;

Power of Attorney: The patent practitioners associated with Customer Number 23735

Domestic Priority data as claimed by applicant

This application is a CIP of 09/620,019 07/20/2000
and is a CIP of 09/563,664 05/02/2000 PAT 6,505,160
and claims benefit of 60/257,822 12/21/2000
and is a CIP of PCT/US01/22953 07/20/2001

Foreign Applications

If Required, Foreign Filing License Granted: 10/27/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/952,384**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Using embedded data with file sharing

Preliminary Class

707

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as

set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign AssetsControl, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Vivien Y. Tsang
THE SHERWIN-WILLIAMS COMPANY
1100 Midland Bldg. - Legal Dept.
101 Prospect Avenue, N.W.
Cleveland, OH 44115-1075

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SEP 22 2005

OFFICE OF PETITIONS

In re Application of:
KRAJNIK, John, M., et al.
Application No.: 09/952,390
Filing Date: September 14, 2001
Attorney's Docket No.: 6752
For: WATERBORNE COATING COMPOSITION

DECISION ON PETITION FOR REVIVAL OF ABANDONED APPLICATION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-entitled application, filed October 25, 2004.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed April 25, 2003, which set a shortened statutory period for reply of three (3) months. A response was not filed and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned at midnight on July 25, 2003.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a response to the Office action mailed April 25, 2003; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Office action of April 25, 2003 is accepted as having been unintentionally delayed.

The application file is being referred to Technology Center AU 1713

Telephone inquiries concerning this decision should be directed to Richard M. Ross at (571) 272-3296 or, in his absence, the undersigned at (571) 272-3217.

Frances Hicks for

Brian Hearn
Petitions Examiner
Office Of Petitions

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Paper No. 11

Killworth, Gottman, Hagan & Schaeff, L.L.P.
Suite 500
One Dayton Centre
Dayton, OH 45402-2023

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OCT 2 1 2003

OFFICE OF PETITIONS

In re Application of
Albano et al.
Application No. 09/952,398
Filed: September 14, 2001
Attorney Docket No. AXC 0003 PA

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed September 19, 2003, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the non-final Office action mailed January 21, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were timely obtained. Accordingly, this application became abandoned on April 22, 2003. A Notice of Abandonment was mailed on July 22, 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 $930.00 extension of time fee submitted with the petition on September 19, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will not be charged to petitioner's credit card.

The file is now being forwarded to Technology Center 1700 for further examination on the merits.

Telephone inquiries should 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

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THE BILICKI LAW FIRM, P.C.
Furniture Mart Building,
Suite 1000
111 West Seconds Street
Jamestown, NY 14701

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of :
Ross, et. al : DECISION ON PETITION
Application No. 09/952,422 :
Filed: September 13, 2001 :
Docket No.: 030.0011501 :

This is a decision on the petition to revive under 37 CFR 1.181, filed May 30, 2006.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned December 23, 2005 for failure to timely submit a proper reply to the non-final Office action mailed September 22, 2005. Notice of Abandonment was mailed March 30, 2006.

Petitioner asserts non-receipt of the Office communication mailed September 22, 2005.

In the absence of any irregularity in the mailing of the Office communication, there is a strong presumption that the Office communication was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office communication was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. *See*, MPEP 711.03(c). The showing outlined above may not be sufficient if

there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Petitioners are advised, however, that where an application becomes abandoned as a consequence of a change of correspondence address (the Office action being mailed to the old, uncorrected address and failing to reach the applicant in sufficient time to permit a timely reply), petitioners are required to establish that due care was taken to adhere to the requirement for prompt notification in each concerned application of the change of address (See, MPEP 601.03), and must include an adequate showing that a timely notification of the change of address was filed in the application concerned, and in a manner reasonably calculated to call attention to the fact that it was a notification of a change of address. See, MPEP 711.03(c).

Office records indicate the Office communication was properly mailed to the correspondence address of record at the time of mailing. Accordingly, there was no irregularity in mailing the Office communication on the part of the United States Patent and Trademark Office as a change of correspondence address to date has not been received.

Any renewed petition must that a change of correspondence address was properly submitted.

The correspondence address indicated on the instant petition differs from that currently of record in 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.

ALTERNATE VENUE

Petitioners are strongly urged to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which 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". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the 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 Petition** Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(571) 273-8300
By hand delivery:	U.S. Patent and Trademark Office Customer Window, **Mail Stop Petition** Randolph Building 401 Dulany Street Alexandria, VA 22314

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

CC: ARTHUR A. GASEY
NIRO, SCAVONE, HALLER & NIRO
181 W. MADISON - SUITE 4600
CHICAGO, IL 60602

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JAN 08 2007

OFFICE OF PETITIONS

THE BILICKI LAW FIRM, PC
1285 North Main Street
JAMESTOWN, NY 14701

In re Application of :
Ross, et. al : DECISION ON PETITION
Application No. 09/952,422 :
Filed: September 13, 2001 :
Docket No.: 030.0011501 :

This is a decision on the renewed petition to revive under 37 CFR 1.181, filed September 13, 2006.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **GRANTED**.

This application was held abandoned December 23, 2005 for failure to timely submit a proper reply to the non-final Office action mailed September 22, 2005. Notice of Abandonment was mailed March 30, 2006.

Petitioners assert non-receipt of the Office communication mailed September 22, 2005.

Petitioners' arguments have been carefully considered and found convincing. Petitioners have established non-receipt of the Office action as a consequence of the Office's failure to enter a timely filed changed of correspondence address in the instant application.

Accordingly, Notice of Abandonment is **WITHDRAWN** and the holding of abandonment is hereby **VACATED**.

This application is being forwarded to Technology Center 1700 for re-mailing of the non-final Office action. The time period for reply will be set in the non-final Office action.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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In re Patent No. COWENS ET AL.
Appl No.: 09/952,454
Filed: September 14, 2001
For: IMPROVED ADHESION BY PLASMA CONDITIONING OF SEMICONDUCTOR CHIP SURFACES

DECISION GRANTING PETITION
37 CFR 1.48(a)

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TECHNOLOGY CENTER 2800

This is a decision on the petition filed December 2, 2002 to correct inventorship under 37 CFR 1.48(a)(2).

The petition is granted.

In view of the papers filed December 2, 2002, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48(a). The inventorship of this application has been changed by adding Phillip R. Coffman as an inventor.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

David A. Zarneke
Primary Patent Examiner
Art Unit 2829
Technology Center 2800

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P O BOX 655474, M/S 3999
DALLAS, TX 75265

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MAIL Paper No. 19

ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

JUN 04 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of
Dravida, et al.
Application No. 09/952,482
Filed: September 13, 2001
For: NETWORK ARCHITECTURE FOR INTELLIGENT NETWORK ELEMENTS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed March 31, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petition fails to meet requirement (4), (5) and (6) above, insomuch as there is no description of the classes or subclasses that were searched, and no discussion of the references has been made. Furthermore, details of any text searches used absent a class/subclass search have not been provided.

For the above stated reasons, the petition is **DENIED**.

Petitioner may submit a request for reconsideration within TWO MONTHS of the date of this decision. Any request for reconsideration should include a complete description of the search method employed, such as classes and subclasses searched, a description of text searches used, etc. The application file will be held in the Technology Center to await a request for reconsideration.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ROPES & GRAY LLP
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

In re Application of :
DRAVIDA, et al. :
Application No. 09/952,482 : DECISION ON PETITION TO
Filed: September 13, 2001 : MAKE SPECIAL
For: NETWORK ARCHITECTURE FOR :
INTELLIGENT NETWORK ELEMENTS :

This is a decision on the Request for Reconsideration on petition decision filed August 6, 2004 under Manual of Patent Examination Procedure §708.02, VIII requesting accelerated examination.

The petition under Manual of Patent Examination Procedure §708.02, VIII, must:
(1) be filed prior to receiving any examination by the examiner,
(2) be accompanied by the required fee- $130,
(3) the claims should be directed to a single invention (if it is determined that the claims pertain to more than one invention, then applicant will have to make an election without traverse or forfeit accelerated examination status),
(4) state that a pre-examination search was made, and fully discuss the search method employed, such as classes and subclasses searched, publications, Chemical abstracts, patents, etc. A search made by a foreign patent office satisfies this requirement,
(5) be accompanied by a copy of each of the references most closely related to the subject matter encompassed by the claims if said references are not already of record,
(6) fully discuss the references, pointing out with the particularity required by 37 C.F.R. §1.111 (b) and (c), how the claimed subject matter is patentable over the references.

The petition and Request for Reconsideration now meet all the above requirements.

The petition is **GRANTED**.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 7

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
SUITE 800
WASHINGTON DC 20005

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APR 19 2002

OFFICE OF PETITIONS

In re Application of	:	
Storck and Plehn	:	
Application No.: 09/952,484	:	DECISION ACCORDING
Filed: September 14, 2001	:	STATUS UNDER RULE
Attorney Docket No: N1388-015	:	47(a)
For: INBRED CORN LINE 3633BM	:	

This is in response to the petition under 37 CFR 1.47(a), filed January 11, 2002.

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.

A "Notice to File Missing Parts of Non-Provisional Application" ("Notice") was mailed to petitioner on October 12, 2001, indicating that a proper oath or declaration had not been filed for the above-cited application and that a $130.00 surcharge was also due because a proper oath or declaration was not timely filed. The Notice also advised that filing and claim fees were outstanding. The Notice set forth a period of reply of two months from the mailing date of the Notice. In response thereto on January 11, 2002, petitioner filed a petition under 37 CFR 1.47(a), a "Declaration and Power of Attorney for Patent Application", and paid the required fees and surcharge. Petitioner also obtained an extension of time within the first month.

With the filing of statement of Robert Jondle, petitioner has established that the non-signing inventor was presented with a complete copy of the application papers, but refused to join the filing of the above-identified application during a telephone conversation with Mr. Jondle.

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(a), 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.

This application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries should be directed to Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Dale Herman Storck
146 West Maple Street
Sugra Grove, Illinois 60544

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APR 19 2002

OFFICE OF PETITIONS

In re Application of
Storck and Plehn
Application No.: 09/952,484
Filed: September 14, 2001
For: INBRED CORN LINE 3633BM

LETTER

Dear Mr. Storck:

You are a joint inventor in the above-identified United States patent application filed under 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 as a joint inventor.

As you are 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 Kenya A. McLaughlin, Petitions Attorney, at (703) 305-0010. 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, DC area).

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ROTHWELL, FIGG, ERNST & MANBECK, P.C.
1425 K STREET, N.W.
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111 Monument Circle
Indianapolis IN 46204-5137

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OFFICE OF PETITIONS

In re Application of
Wechsler, et al.
Serial No. 09/952,508
Filed: September 11, 2001
Attorney Docket No. 31073-7

: LETTER GRANTING
: FILING DATE

This is a response to the correspondence entitled, "PETITION UNDER 37 CFR 1.10(c) or 1.10(d)," filed January 4, 2000, requesting that the above-identified application be accorded a filing date of September 11, 2001, instead of the presently accorded date of September 12, 2001.

The PTO is aware that as a result of the events in New York City on September 11, 2001, all post offices in the borough of Manhattan and others around the country were closed on September 11, 2001. The Commissioner has designated this interruption in the service of the United States Postal Service (USPS) as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). See the notice entitled "United States Postal Service Interruption and Emergency," 1251 Off. Gaz. Pat. Office 55 (Oct. 9, 2001).

The submission filed January 4, 2002, states that petitioners attempted to deposit the application in Express Mail service on September 11, 2001. However, the USPS refused to accept Express Mail due to the shutting down of air traffic because of terrorist activities. Petitioners allege that but for the designated interruption in the USPS, the application would have been accorded September 11, 2001 as the "date-in." Under 37 CFR 1.10(a), correspondence received by the PTO that was delivered by the "Express Mail Post Office to Addressee" service of the USPS is considered filed in the Office on the date of deposit with the USPS shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

Petitioners have provided a copy of blank Express Mail label "EM372933075US." The same Express Mail label number is cited on the transmittal letter found among the original application papers. The petition is accompanied by a statement by Kelly Cummings, a postal employee, who attests to the fact that petitioners attempted to deposit Express Mail package "EM372933075US." on September 11, 2001, but the USPS refused to accept it because of terrorist activity. Ms. Cummings statement was executed on September 11, 2001. Petitioners request that the application be accorded a filing date of September 11, 2001.

Based on the submission filed January 4, 2002, it is concluded that the present application would have been filed on September 11, 2001, if it were not for the designated interruption in the USPS.

The petition is granted. Accordingly, the application will be accorded a filing date of September 11, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2001.

Telephone inquiries concerning this matter should be directed to Petitions Attorney E. Shirene Willis at (703)308-6712.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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SCHWEGMAN, LUNDBERG, WOESSNER
& KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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MAY 17 2006

OFFICE OF PETITIONS

In re Patent of	:	
Sun et al.	:	
Application No. 09/952,520	:	DECISION
Filed: September 13, 2001	:	ON PETITION
Attorney Docket Number:	:	
1384.007US1	:	

This is a decision in response to the Petition Under 37 CFR § 1.137(b), filed March 13, 2006, to revive the above-identified application.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed March 14, 2005. The Office action set a three (3) month period for reply. No extensions of time having been obtained under 37 CFR 1.136(a), this application became abandoned on June 15, 2005. A Notice of Abandonment was mailed October 5, 2005.

With the instant petition, Petitioner has satisfied the requirements of a grantable petition under 37 CFR 1.137(b). A response to the Office action is filed with the instant petition. Accordingly, the petition is granted.

This application is being referred to Technology Center Art Unit 2136 for processing of the Amendment filed with the petition in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

Derek L. Woods
Attorney
Office of Petitions

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& KLUTH, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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OCT 24 2006

OFFICE OF PETITIONS

In re Application of :
SUN, et al. :
Application No. 09/952,520 : DECISION ON PETITION
Filed: September 13, 2001 : TO WITHDRAW
Attorney Docket No. FORT-000700 : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed July 24, 2006.

The request is **NOT APPROVED** as moot.

A review of the file record indicates that the power of attorney to SCHWEGMAN, LUNDBERG, WOESNER & KLUTH, P.A. has been revoked by the assignee of the patent application on July 20, 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 first copied address below until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Patricia Volpe at 571-272- 6825.

David Bucci
Petitions Examiner
Office of Petitions

cc: MICHAEL A. DE SANCTIS
756 HARRISON ST.
DENVER, CO 80206

cc: Faegre & Benson LLP
3200 Wells Fargo Center
1700 Lincoln Street
Denver, CO 80203-4532

UNITED STATES PATENT AND TRADEMARK OFFICE

OCT 12 2004

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P.O. Box 1450
Alexandria, VA 22313-1450
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TEDDY C. SCOTT
HOWREY SIMON ARNOLD & WHITE, LLP
321 N. CLARK STREET, SUITE 3400
CHICAGO, IL 60610

In re Application of :
Jingwu Zhang :
Serial No. : 09/952,532 :
Filed : 14 September 2001 :
Attorney Docket No.: 05627.0003. NPUS00 :

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.144, and 1.181 (A) (2) filed on 04 June 2004.

BACKGROUND

A review of the file history shows that the Office made a restriction requirement under 35 U.S.C. 121, of claims 1-20 into three groups and subsequently made final. The groupings are reproduced below:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I, claims 1-8, drawn to an autologous T cell vaccine made by a process (product-by-process).

Group II, claims 9, 10, 19-20, drawn to a method of treating multiple scelorosis in a human.

Group III, claims 11-18, drawn to a method of preparing an autologous T cell vaccine.

The Examiner supported this restriction between the product, process of making the product, and process of using the product using the Form Paragraphs 806.05(f) and 806.05(h).

The examiner stated that the product (group I) and a process of using the product (group II) are distinct inventions because, 'the product as claimed can be used in materially different processes, such as for in vitro assays."

The examiner stated that the product (group I) and a process of making the product (group III) are distinct inventions because, "the process as claimed can be used to produce compositions not intended for in vivo use, e.g., T cells intended for in vitro use."

Applicants elected group I, claims 1-8 with traverse in the response filed on 26 January 2004.

Examiner addressed applicants traversal regarding the restriction between groups I, II, and III, stating that this instant application is not a national stage application. Examiner further informed applicants that the process claims that depend on the allowable product claims may be rejoined in accordance to MPEP 821.04. Examiner examined claims 1-8 and withdrawn claims 9-20 from consideration under 37 C. F. R. 1.142 (b). The restriction requirement was made final in the office action mailed on 01 April 2004.

The petition to review the finality of restriction requirement was filed on 04 June 2004.

DISCUSSION

The application, file history and petition have been considered carefully. In the Petition filed on 04 June 2004, Applicants requests reconsideration of the restriction imposed on the product, process of making the product and process of using the product.

Applicant's points to MPEP 806.05(i), 37 CFR 1.141 (b) Different inventions in one national application.

> (b) Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three-way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with the claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.
> Where an application contains claims to a product, claims to a process specially adapted for (i.e., not patentably distinct from, as defined in MPEP § 806.05(f)) making the product, and claims to a process of using the product, and the product claims are not allowable (i.e., not novel and no obvious), restriction is proper between the process of making and the process of using. In this instance, applicant may be required to elect either (A) the product and process of making it; or (B) the process of using. Unless the examiner can make a showing of distinctness between the process of using and the product (MPEP § 806.05(h)), the product must also be joined with the process of using in grouping (B).

Applicants are correct that the examiner has failed to apply a proper standard for determining the distinctness between the claimed product and process of making the product and process of using the product. The reason for restriction between the product and process of making applied by the examiner 'process as claimed can be used to produce compositions not intended for in vivo use' is incorrect.

Moreover, 'the process of preparing an autologous T cell vaccine' as in the group III would not result in other and materially different product from the group I product. Conversely, the product as claimed cannot be made by a materially different process. The Office has not

established patentable distinction between the product and process of making the product. Thus the restriction between the product and process of making the product is improper and withdrawn.

Regarding the restriction requirement between the 'process of using the product' (group II), and the rejoined product (group I) and process of making the product (group III):
According to 37 C. F. R. 1.141 (b),

> "where an application contains claims to a product, claims to a process specially adapted for making the product, and claims to a process of using the product, and the product claims are not allowable (i.e., not novel and nonobvious), restriction is proper between the process of making and the process of using."

In this instant case, examiner in the office action mailed on 01 April 2004, cited that Correale et al (J. Neuroimmunology, Vol. 107, pages 130-139, 2000) teach the product of group I, thus the restriction of the rejoined (group I and group III) (product and process of making the product) versus group II (process of using the product) is proper.

Applicants are reminded of rejoinder practice MPEP 821.04

> If applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

For these reasons, the restriction requirement between group I and group II is maintained and restriction requirement between group I and group III is withdrawn.

DECISION

Applicants petition under 37 CFR 1.144 filed on 04 June 2004 is **GRANTED IN PART** for the reasons set forth above. Any request for consideration must be filed within TWO (2) months of the mailing date of this decision.

The restriction requirement between group I and group III is withdrawn. The application will be forwarded to the examiner for preparation of an action consistent to this petition decision.

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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Alexandria, VA 22313-1450
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POLSINELLI SHALTON WELTE SUELTHAUS P.C.
700 W. 47TH STREET
SUITE 1000
KANSAS CITY MO 64112-1802

COPY MAILED
AUG 24 2006
OFFICE OF PETITIONS

In re Application of	:	
Zang, Jingwu Z.	:	
Application No. 09/952,532	:	ON PETITION
Filed: September 14, 2001	:	
Attorney Docket No. 050989.0200NPUS00	:	

This is a decision on the petition under 37 C.F.R. § 1.182, filed July 11, 2006, to change the name of an inventor.

The petition is **GRANTED.**

The name will be changed from Jingwu Z. Zhang to Jingwu Z. Zang.

This matter is being referred to Technology Center 1600 for further examination on the merits.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206. All other inquiries regarding this application should be directed to the Technology Center.

Liana Chase
Petitions Examiner
Office of Petitions

Enclosure: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
09/952,532	09/14/2001	1644	656	05989.0200.NPUS00	1	20	2

CONFIRMATION NO. 5302

27148
POLSINELLI SHALTON WELTE SUELTHAUS P.C.
700 W. 47TH STREET
SUITE 1000
KANSAS CITY, MO 64112-1802

CORRECTED FILING RECEIPT
OC000000020160098
OC000000020160098

Date Mailed: 08/23/2006

Receipt is acknowledged of this regular Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please mail to the Commissioner for Patents P.O. Box 1450 Alexandria Va 22313-1450. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).**

Applicant(s)

Jingwu Z. Zang, Missouri City, TX;

Power of Attorney: The patent practitioners associated with Customer Number **27148**.

Domestic Priority data as claimed by applicant

Foreign Applications
If Required, Foreign Filing License Granted: 10/12/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US09/952,532

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

**** SMALL ENTITY ****

Title

Autologous T-cell vaccines materials and methods

Preliminary Class

424

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at http://www.uspto.gov/web/offices/pac/doc/general/index.html.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, http://www.stopfakes.gov. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER
Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject

matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).

OIPE JC103
JAN 2 8 2005
PATENT & TRADEMARK OFFICE

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	09/952,534
Filing Date	09/14/2001
First Named Inventor	Pierre-Yves Desprez
Art Unit	1642
Examiner Name	Davis, Minh Tam B
Attorney Docket Number	2960.50-1

To: Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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 23308

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: Case is to be prosecuted in-house by assignee.

APPROVED
9/27/05
WILLIAM R. DIXON, JR.
SPECIAL PROGRAM EXAMINER

CORRESPONDENCE ADDRESS

1. ☐ The correspondence address is NOT affected by this withdrawal.
2. ☑ Change the correspondence address and direct all future correspondence to:

☑ The address associated with Customer Number: 08076

OR

☐ Firm or Individual Name					
Address					
City		State		Zip	
Country					
Telephone			Fax		

Signature			
Name	David J. Aston	Registration No.	28,051
Date	January 25, 2005	Telephone No.	(650) 324-1677

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.

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)
6663544	2003-12-16	09952557	2001-09-14	54599000

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	/craigfieschko/	Date (YYYY-MM-DD)	2008-05-07
Name	Craig A. Fieschko	Registration Number	39668

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 6663544
Issue Date: December 16,2003
Application No. 09952557
Filed: September 14,2001
Attorney Docket No. 1

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 7,2008 ,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 May 7,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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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OFFICE OF PETITIONS

Foley & Lardner
Customer Number:30542
P.O. Box 80278
San Diego, California 92138-0278

In re Application of
Gage et al.
Application No. 09/952,559
Patent No.6,875,569
Filed: September 13, 2001
Attorney Docket No. 088802-4758

: DECISION GRANTING PETITION

This decision is in response to applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" timely filed[1] on February 6, 2004. Applicants request that at the time of the notice of allowance, the PTA determination be corrected from one hundred and sixty seven (167) days to two hundred and forty-five days.

The application for patent term adjustment is **GRANTED.**

The office will remove the seventy-eight days of Office delay. Moreover, after the notice of allowance, an additional one hundred and fifteen days (133-18) were provided. Accordingly, at the time of the issuance of the patent, applicants were entitled to THREE HUNDRED AND SIXTY (360) days of PTA (245 + 115).

The Office will *sua sponte* issue a certificate of correction changing the overall determination for PTA from two hundred and eighty-two (282) days to three hundred and sixty (360) days.

Applicants argue that the seventy-eight day reduction assessed against applicants for the 10/23/2003 supplemental paper is an error because the paper was expressly requested by the examiner and accordingly should not have been considered a failure to engage in reasonable efforts to conclude prosecution of the application pursuant to 37 CFR 1.704(c)(8).

A review of the file history reflects that the supplemental responses filed on October 16, 2003 and October 22, 2003 were expressly requested by the examiner. Amendments filed expressly state that the amendments were filed pursuant to a telephone conversation between the examiner and the applicants. Accordingly, the Office finds that the amendments filed were expressly requested by the examiner and therefore should not be considered to be a failure to engage in reasonable efforts to conclude prosecution of the application pursuant to 37 CFR 1.704(c)(8).

The Office will assess the $200.00 fee to deposition account 50-0872. No additional fees are required.

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[1]Application was fled prior to the payment of the issue fee and therefore timely filed.

After the mailing of this Office action, the file will be forwarded to the certificate of correction branch for a prompt issuance of the certificate of correction.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7757.

/Kery A. Fries/ for

Karin Ferriter
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 9

MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581415
MINNEAPOLIS, MN 55458

COPY MAILED

SEP 0 6 2002

OFFICE OF PETITIONS

In re Application of
Katherine E. Kilpatrick et al.
Application No. 09/952,560
Filed: September 12, 2001
Attorney Docket No. 07083.0012U2
Title: EPHA2 MONOCLONAL ANTIBODIES AND METHODS OF MAKING AND USING SAME

DECISION ON PETITION

This is a decision on the petition pursuant to 37 CFR 1.182, to accept the Power of Attorney signed by less than all the applicants, filed July 26, 2002.

The application was filed on September 12, 2001, without an executed declaration and identifying Katherine E. Kilpatrick, Michael S. Kinch and Kelly Carles-Kinch as joint inventors. On May 31, 2002, joint inventor Kilpatrick filed a partially executed declaration under 37 CFR 1.63 granting the power of attorney to customer #'s 23859 [NEEDLE & ROSENBERG, P.C.] and 23347 [GLAXOSMITHKLINE] and directing that all correspondence and telephone/fax calls be directed to Tina Williams McKeon at Needle & Rosenberg, as the correspondence address of record. On May 31, 2002, a separate Declaration was filed. This declaration was executed by joint inventors Kinch and Carles-Kinch but no power of attorney was granted in that document.[1]

Additionally, petitioners Michael S. Kinch and Kelly Carles-Kinch by and through Victoria A. Sanberg, MUETING, RAASCH & GEBHARDT, P.A., P.O. box 581415, Minneapolis, MN 55458-1415, filed the instant petition, requesting that petitioners Kinch and Carles-Kinch be permitted to appoint separate counsel to represent petitioners' interest in the above-identified patent application, in order to assure that all interests are properly and effectively represented.

The petition is hereby **granted** to the extent that MUETING, RAASCH & GEBHARDT, P.A. are accepted as powers of attorney for Michael S. Kinch and Kelly Carles-Kinch. This power of attorney does not apply to inventor Katherine E. Kilpatrick.

In order to ensure that all interests are properly and effectively represented, **all further correspondence to the Patent and Trademark Office (Office) must be signed by Petitioners' representative (Mueting et al.), as named in the Power of Attorney submitted with the instant petition, and likewise signed by Katherine E. Kilpatrick's representative (Needle et al) as named in the declaration for patent filed May 31, 2002. Each attorney or agent signing subsequent papers must indicate whom he or she represents.**

All parties are reminded that dual correspondence is not permitted, and will not

---

[1]The declarations filed May 31, 2002, with a request and fee for a four month extension of time, were filed in response to the Notice to File Missing Parts mailed November 13, 2001.

be undertaken by this Office.

The Office will continue to conduct correspondence with the attorneys first named in the application, Needle et al., at the correspondence address of record noted above, who will also be responsible for coordinating replies or submissions to this Office. *See*, Manual of Patent Examining Procedure ("MPEP") 402.10.

It is noted that, notwithstanding this Decision, the inventors may still jointly appoint or revoke power of attorney.

This application is being forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries related to this decision may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
NEEDLE & ROSENBERG, P.C.
THE CANDLER BUILDING, SUITE 1200
127 PEACHTREE ST., N.E.
ATLANTA, GA 30303

FAX

To	Examiner Susan Ungar
Company	USPTO, Art Unit 1642
Fax	571-273-0837
From	Virginia Campen
Tel	919-483-1012
E-mail	
Date	02-Aug-2005 **Pages including cover** 3
Subject	SN 09/952,560

GlaxoSmithKline

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AUG 0 2 2005

Decision on Petition regarding Power of Attorney
09/952,560

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07083.0012U2

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Washington, D.C. 20231
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NEEDLE & ROSENBERG

Paper No. 9

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MUETING, RAASCH & GEBHARDT, P.A.
P.O. BOX 581415
MINNEAPOLIS, MN 55458

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SEP 0 6 2002
OFFICE OF PETITIONS

DECISION ON PETITION

In re Application of
Katherine E. Kilpatrick et al.
Application No. 09/952,560
Filed: September 12, 2001
Attorney Docket No. 07083.0012U2
Title: EPHA2 MONOCLONAL ANTIBODIES AND METHODS OF MAKING AND USING SAME.

This is a decision on the petition pursuant to 37 CFR 1.182, to accept the Power of Attorney signed by less than all the applicants, filed July 26, 2002.

The application was filed on September 12, 2001, without an executed declaration and identifying Katherine E. Kilpatrick, Michael S. Kinch and Kelly Carles-Kinch as joint inventors. On May 31, 2002, joint inventor Kilpatrick filed a partially executed declaration under 37 CFR 1.63 granting the power of attorney to customer #'s 23859 [NEEDLE & ROSENBERG, P.C.] and 23347 [GLAXOSMITHKLINE] and directing that all correspondence and telephone/fax calls be directed to Tina Williams McKeon at Needle & Rosenberg, as the correspondence address of record. On May 31, 2002, a separate Declaration was filed. This declaration was executed by joint inventors Kinch and Carles-Kinch but no power of attorney was granted in that document.[1]

Additionally, petitioners Michael S. Kinch and Kelly Carles-Kinch by and through Victoria A. Sanberg, MUETING, RAASCH & GEBHARDT, P.A., P.O. box 581415, Minneapolis, MN 55458-1415, filed the instant petition, requesting that petitioners Kinch and Carles-Kinch be permitted to appoint separate counsel to represent petitioners' interest in the above-identified patent application, in order to assure that all interests are properly and effectively represented.

The petition is hereby **granted** to the extent that MUETING, RAASCH & GEBHARDT, P.A. are accepted as powers of attorney for Michael S. Kinch and Kelly Carles-Kinch. This power of attorney does not apply to inventor Katherine E. Kilpatrick.

In order to ensure that all interests are properly and effectively represented, **all further correspondence to the Patent and Trademark Office (Office) must be signed by Petitioners' representative (Mueting et al.), as named in the Power of Attorney submitted with the instant petition, and likewise signed by Katherine E. Kilpatrick's representative (Needle et al) as named in the declaration for patent filed May 31, 2002. Each attorney or agent signing subsequent papers must indicate whom he or she represents.**

All parties are reminded that dual correspondence is not permitted, and will not

[1]The declarations filed May 31, 2002, with a request and fee for a four month extension of time, were filed in response to the Notice to File Missing Parts mailed November 13, 2001.

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be undertaken by this Office.

The Office will continue to conduct correspondence with the attorneys first named in the application, Needle et al., at the correspondence address of record noted above, who will also be responsible for coordinating replies or submissions to this Office. *See*, Manual of Patent Examining Procedure ("MPEP") 402.10.

It is noted that, notwithstanding this Decision, the inventors may still jointly appoint or revoke power of attorney.

This application is being forwarded to Technology Center 1600 for examination in due course.

Telephone inquiries related to this decision may be directed to the undersigned Petitions Attorney at (703) 305-4497.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
NEEDLE & ROSENBERG, P.C.
THE CANDLER BUILDING, SUITE 1200
127 PEACHTREE ST., N.E.
ATLANTA, GA 30303

PAGE 3/3 * RCVD AT 8/2/2005 9:00:46 AM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/25 * DNIS:2730837 * CSID:919 483 7988 * DURATION (mm-ss):01-18

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ALEXANDRIA, VA 22313-1450
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Paper No. 15

STMICROELECTRONICS, INC.
MAIL STATION 2346
1310 ELECTRONICS DRIVE
CARROLLTON TX 75006

MAIL

MAR 2 4 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
James T. O'Connor
Application No. 09/952,577
Filed: September 10, 2001
For: FIRST ORDER TUNING CIRCUIT FOR A PHASE-LOCKED LOOP

DECISION ON PETITION

This is a decision on the petition filed September 22, 2003 pursuant to 37 CFR 1.181(a)(1) to invoke the supervisory authority of the Commissioner to withdraw the Final Office action mailed July 14, 2003 (paper No. 10) and for the appeal from the Final Office rejection of January 28, 2003 (paper No. 6) be restored.

On January 28, 2003, the Office mailed a final Office action (paper No. 6).

On March 28, 2003, Applicant filed a Request for Reconsideration of the Final Rejection. On May 30, 2003 Applicant proceeded to file a Notice of Appeal.

On July 14, 2003, the examiner mailed out a new final Office action (paper No. 10).

On August 12, 2003 the Office received Appellant's Appeal Brief and on September 22, 2003 Appellant filed an amendment and the subject Petition.

On November 14, 2003 the Office mailed a new non-final Office action (paper No. 13), effectively reopening prosecution.

MPEP §1208.01 Prohibition Against Entry of New Ground of Rejection in Examiner's Answer states in part:

> 37 CFR 1.193(a)(2) prohibits the entry of a new ground of rejection in an examiner's answer. At the time of preparing the answer to an appeal brief, however, the examiner may decide that he or she should apply a new ground of rejection against some or all of the appealed claims. In such an instance where a new ground of rejection is necessary, the examiner should reopen prosecution.

MPEP §1208.02 Reopening of Prosecution After Appeal

> The examiner may, with approval from the supervisory patent examiner, reopen prosecution to enter a new ground of rejection after appellant's brief or reply brief has been filed. The Office action containing a new ground of rejection may be made final if the new ground of rejection was (A) necessitated by amendment, or (B) based on information presented in an information disclosure statement under 37 CFR 1.97(c) where no statement under 37 CFR 1.97(e) was filed. See MPEP § 706.07(a).
>
> After reopening of prosecution, appellant must exercise one of the following options to avoid abandonment of the application:
>
> (A) file a reply under 37 CFR 1.111, if the Office action is non-final;

(B) file a reply under 37 CFR 1.113, if the Office action is final; or
(C) request reinstatement of the appeal.

See 37 CFR 1.193(b)(2). Whether appellant elects to continue prosecution or to request reinstatement of the appeal, if prosecution was reopened prior to a decision on the merits by the Board of Patent Appeals and Interferences, the fee paid for the notice of appeal, appeal brief, and request for oral hearing (if applicable) will be applied to a later appeal on the same application.

If reinstatement of the appeal is requested, the request must be accompanied by a supplemental appeal brief; however, no new amendments, affidavits (37 CFR 1.130, 1.131, or 1.132), or other evidence is permitted. The supplemental appeal brief must comply with the requirements of 37 CFR 1.192(c), but in doing so may incorporate by reference such parts of the previously-filed brief as may still be applicable. The arguments presented in the supplemental appeal brief need only be those relevant to the new ground(s) of rejection raised in the Office action that reopened prosecution, but the appellant should also identify all previously-raised issues and/or arguments which are still considered to be relevant. If the examiner does not consider that the supplemental appeal brief complies with the foregoing requirements, appellant should be given a 1-month time period within which to file an amended supplemental brief under 37 CFR 1.192(d). See MPEP § 1206.

While Petitioner's argument regarding the appropriateness of the new final Office action mailed July 14, 2003 may have some merit, the non-final Office action mailed November 14, 2003 reopened prosecution according to MPEP §1208.01 and 37 CFR 1.193(a)(2), and proposed new grounds of rejection.

Therefore, the petition to invoke the supervisory authority of the Commissioner under 37 CFR §1.181 to remove the final Office action of July 14, 2003 and reinstall the appeal on the final Office action mailed January 28, 2003, is **Dismissed as Moot.**

In accordance with MPEP §1208.02, the application is being returned to TC2600's central files to await either a reply under 37 CFR §1.111 or a request for reinstatement of the appeal which is accompanied by a supplemental appeal brief.

Jin Ng, Director
Technology Center 2600
Communications

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Alexandria, VA 22313-1450
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OFFICE OF PETITIONS

WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA PA 19103

In re Application of :
Jeffrey C. Reynar et al. : ON PETITION
Application No. 09/952,602 :
Filed: September 14, 2001 :
Attorney Docket No. REFH0122 :

This is a decision on the petition filed October 12, 2006, to withdraw the holding of abandonment of the above-identified application, which is treated under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on June 7, 2006, for failure to timely reply to the Final Office Action mailed March 7, 2006. A response was filed June 8, 2006 with a certificate of mail dated June 6, 2006 however, by way of an Advisory Action mailed July 5, 2006 petitioners were advised that the response did not place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed September 14, 2006.

Petitioner contends that a reply in the form of an RCE and a three month extension of time were filed in the USPTO on September 8, 2006. A review of the file reveals that the RCE and extension of time were received on September 8, 2006, however they were not timely filed. The maximum period of extension obtainable was three months from the due date of the response to the Final Office Action which was September 7, 2006. In order for the extension of time to have extended the period for reply to the Final Office Action, it would have to have been filed by September 7, 2006. While the response was dated September 7, 2006, it did not include a certificate of mail pursuant to 37 CFR 1.8 and neither was it received by September 7, 2006. Petitioner has filed a copy of an express mail label to show that the RCE and three month extension of time request were filed on September 7, 2006. Petitioner is advised that filing by express

mail is not an acceptable alternative to a timely filing or a certificate of mail as proof of a timely filing. Thus the application was properly abandoned.

In view thereof, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) 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). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

> (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
>
> (2) the petition fee as set forth in 37 CFR 1.17(m) ($675.00);
>
> (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 Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE, 46TH FLOOR
1650 MARKET STREET
PHILADELPHIA PA 19103

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OFFICE OF PETITIONS

In re Application of
Jeffrey C. Reynar et al.
Application No. 09/952,602
Filed: September 14, 2001
Attorney Docket No. REFH0122

ON PETITION

This is a decision on the renewed petition filed January 16, 2007, to withdraw the holding of abandonment of the above-identified application, which is treated under 37 CFR 1.181.

The petition is GRANTED.

The above-referenced application was held abandoned on June 7, 2006, for failure to timely reply to the Final Office Action mailed March 7, 2006. A response was filed June 8, 2006 with a certificate of mail dated June 6, 2006 however, by way of an Advisory Action mailed July 5, 2006 petitioners were advised that the response did not place the application in condition for allowance. Accordingly, a Notice of Abandonment was mailed September 14, 2006. In a petition filed October 12, 2006 petitioner argued that a reply in the form of an RCE and a three month extension of time were timely filed in the USPTO on September 8, 2006. The petition was dismissed in a decision mailed November 3, 2006 because although the RCE was filed September 8, 2006 it was filed without the benefit of a certificate of mail and was received outside the maximum period of extension obtainable which was September 7, 2006.

Comes now petitioner renewing their argument that the RCE and extension of time request were filed September 7, 2006 by Express Mail. In support, petitioner supplies a copy of Express Mail Label No. EV817338488US (the same Express Mail number found on the RCE transmittal).

In view of the above, the response in the form of the RCE was timely filed on September 7, 2006. The Notice of Abandonment mailed September 14, 2006 was mailed in error and is hereby withdrawn. No petition fee is due and none has been charged.

This matter is being referred to Technology Center 2131 for processing the RCE filed by Express Mail on September 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

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,585,671	2003-07-01	09/952,620	2001-09-11	08-089-ML

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	/Adam J. Bruno/	Date (YYYY-MM-DD)	2008-05-22
Name	Adam J. Bruno	Registration Number	58390

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. 6585671
Issue Date: July 1,2003
Application No. 09952620
Filed: September 11,2001
Attorney Docket No. C2P2001_043

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed May 22,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 22,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 21

THOMAS B. HAVERSTOCK
HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

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NOV 24 2003

OFFICE OF PETITIONS

In re Application of
MIKE BRUNER
Application No. 09/952,626
Filed: September 13, 2001
Attorney Docket No. SLM-08300

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed June 10, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the present nonprovisional application for failure to timely notify the U.S. Patent and Trademark 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).

Petitioner states that the present nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on August 29, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on June 3, 2002.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. *See* Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2))(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at http://www.uspto.gov/web/patents/patog/week26/.

In the present application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country. Therefore, this application is not regarded as abandoned because receipt in the USPTO of the request to rescind before the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request. As such, the filing of a petition to revive is unnecessary and is **dismissed** as involving a moot issue.

For the reason stated above, this application is not in fact abandoned. The petition fee of $1,300.00 is being credited to Deposit Account No. 08-1275 as authorized.

This application is being forwarded to Technology Center 2800 for further processing.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

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

RAYMOND Y. CHAN
108 N. YNEZ AVE., SUITE 128
MONTEREY PARK CA 91754

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In re Application of	:	
Lin et al.	:	
Application No. 09/952,632	:	ON PETITION
Filed: September 10, 2001	:	
Attorney Docket No. USP1667A-GNC	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed July 5, 2006 and supplemented on December 8, 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) 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.

Petitioner submitted the petition fee on both July 5, 2006 and December 8, 2006. Only one petition fee is required. Accordingly, $750.00 will be credited to petitioner's deposit account as authorized.

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 Walsh
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

PAPER NO. 15

GRAY CARY WARE & FREIDENRICH LLP
2000 UNIVERSITY AVENUE
E. PALO ALTO CA 94303-2248

COPY MAILED

AUG 22 2003

OFFICE OF PETITIONS

In re Application of :
Nubuo Kanou, et al. :
Application No. 09/952,639 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket No. 2102475-991150 :

This is a decision on the petition under 37 CFR 1.313(c)(2), filed by facsimile transmission on August 21, 2003, to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on August 18, 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 relating to this decision should be directed to the undersigned at (703) 305-9220.

After the application is received in the Office of Petition, the file will be forwarded to Technology Center AU 2816 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, wh ther 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

Marianne Fuierer
Intellectual Property/Technology Law
PO Box 14329
Research Triangle Park NC 27709

COPY MAILED

JUN 2 4 2002

OFFICE OF PETITIONS

In re Reissue Application of :
Bentley, Cha, and Pham :
Application No. 09/952,668 : DECISION ACCORDING STATUS
Filed: September 14, 2001 : UNDER 37 CFR 1.47(b)
For: PROCESS FOR CONTINUOUS :
OPTIMIZED PROTEIN PRODUCTION
IN INSECT LARVAE

This is in response to the petition under 37 CFR 1.47(b), filed Febrary 1, 2002 (and the duplicate filed by facsimile on June 14, 2002).

The petition is granted.

Petitioner has shown that the non-signing inventors have 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(b). This application is hereby accorded Rule 1.47(b) 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 Declaration. Notice of the filing of this application will also be published in the Official Gazette.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

Karin Ferriter

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAR 16 2004

#9

INTELLECTUAL PROPERTY / TECHNOLOGY LAW
PO BOX 14329
RESEARCH TRIANGLE PARK NC 27709

In re application of William E. Bentley et al. :
Serial No. : 09/952,668 : DECISION ON PETITION
Filed : September 14, 2001 :
Attorney Docket No.: 4115-166 :

This is in response to applicant's petition, filed February 6, 2002 under 37 CFR 1.181, to "strike" two letters of protest from the application file. The delay in acting on this petition is regretted.

BACKGROUND

Review of the file history shows that the application was filed September 14, 2001 as a reissue of U.S. Patent 6,153,409. The inventors of the '409 patent refused to sign the reissue declaration. Applicant (assignee) petitioned for, and was granted, the right to prosecute the reissue application under 37 CFR 1.47(b). On January 22, 2002 a protest in compliance with 37 CFR 1.291 was filed on behalf of Chesapeake PERL, Inc. Also on January 22, 2002, a second protest was filed by Minh-Quan K. Pham, a co-inventor of the '409 patent.

DISCUSSION

Applicant presents several lines of argument in the petition.

Applicant argues that the letters of protest are extraneous to the determination of patentability. This argument is not persuasive. 37 CFR 1.291 states, in part:

> (b) Protests raising fraud or other inequitable conduct issues will be entered in the application file, generally without comment on those issues.

Even if one accepted, *arguendo*, applicant's argument that the protests are limited to accusations made against applicant, regulation clearly indicates that such protests will be entered in the application file. Contrary to applicant's arguments, the statements made in the protests are not deemed to be in violation of 37 CFR 1.3.

Applicant argues that the protests interfere with applicant's right to respond to the Notice to File Missing Parts, which was mailed October 25, 2001. Since applicant's petition under 37 CFR 1.47(b) has already been granted, this argument is moot.

Applicant argues that its account of the circumstances surrounding the inventors' refusal to sign the reissue declaration is complete and accurate, obviating the need for the accounts provided in the protests. This argument is not persuasive because 37 CFR 1.291 does not require that a protest be "necessary."

Applicant argues that the protestors failed to disclose their financial interests, which constitute a motivational bias. This argument is not persuasive because it is not supported by statute, regulation, case law or USPTO policy as set forth in the MPEP.

Applicant argues that the protests do not provide any identification of patents, publication or other information contemplated as a proper basis for a submission under 37 CFR 1.291. This argument is not persuasive because the basis for a protest is not limited to patents and publications. "Information indicating 'fraud' or 'violation of the duty of disclosure' under 37 CFR 1.56 may be the subject of a protest under 37 CFR 1.291(a)." MPEP 1901.02.

Applicant argues that the protests argue against the substantive basis of the reissue application. This argument is not persuasive. "A protest where the application is specifically identified, which is submitted in conformance with 37 CFR 1.291(a) and (b), will be considered by the Office." The protests are deemed to be in conformance with the regulation and will be considered.

Applicant argues that the protests contain accusations which are prejudicial, outrageous and remote from any proper scope of inquiry. This argument is not persuasive. As noted above, protests in conformance with 37 CFR 1.291 will be placed in the application file, but the examiner will not comment on allegations of fraud or inequitable conduct.

DECISION

Applicant's petition is **DENIED**.

The application will be forwarded to the examiner for preparation of a first Office action on the merits.

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 (571) 272-0974 or by facsimile transmission at (571) 273-0974.

John Doll
Director, Technology Center 1600

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JUL 2 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Bentley et al.	:	DECISION ON PETITION
Application No. 09/952,668	:	
Filed: 14 September, 2001	:	
Atty Docket No. 4115-166	:	

This is a decision on the petition under 37 CFR 1.47(b) filed on 20 June, 2005, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.[1]

The petition is before the Office of Patent Legal Administration for decision.

The petition is **DISMISSED.**

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. **FAILURE TO TIMELY RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.183."

REVIEW OF FACTS

1. On 14 September, 2001, the application was filed as an application for reissue of U.S. Patent No. 5,153,409.

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

2. On 24 June, 2002, a petition under 37 CFR 1.47(a) filed on 1 February, 2002, was granted with respect to joint inventor Minh-Quan Pham.

3. On 20 December, 2004, a final Office action was mailed, setting a three (3) month shortened statutory period for reply.

4. On 16 March, 2005, an Advisory Action was mailed, setting a one (1) month shortened period for reply.

5. On 20 June, 2005, a Request for Continued Examination and a supplemental reissue declaration were filed.

6. On 20 June, 2005, the present petition was also filed, whereby petitioners assert that joint inventors William E. Bentley and Hyung Joon Cha have refused to sign and return the supplemental declaration.

DECISION ON PETITION UNDER 37 CFR 1.183
TO WAIVE §§ 1.67 AND 1.175

The instant petition is not a proper petition because it has been not been signed by a registered practicioner.[2] However, an accompanying paper filed on 20 June, 2005, was signed by registered patent attorney Marianne Fuierer and identified the Request for Continued Examination, two (2) month extension of time, and supplemental reissue declaration, and it referenced the instant petition. Accordingly, the petition will be considered to be ratified by the signature on the accompanying paper.

Petitioners state that a copy of the supplemental declaration under 37 CFR 1.175 was sent to all of the non-signing inventors, but that no response was received.

Suspension of the rules under 37 CFR 1.183 may be granted in an "extraordinary situation, when justice requires." The facts presented on the record do not adequately establish an extraordinary situation. Petitioner has not sufficiently established any special circumstances of equities that would require suspension of the rules in the interests of justice.

This application bears an original Declaration executed by joint inventors Bentley and Cha, and 37 CFR 1.47(a) status was granted with respect to joint inventor Pham on 24 June, 2002. Thus, the provisions of 37 CFR 1.47 do not apply in this instance.

---

[2] 37 CFR 1.33(b)(5). See MPEP 403.

Nevertheless, it is appropriate to apply the principles for a showing under 37 CFR 1.47 to the situation at hand. Since joint inventors Bentley and Cha signed the original declaration, petitioners must show that efforts were made to obtain their signatures on the supplemental declaration.

Petitioners' showing is deficient in that proof of diligent efforts to locate the non-signing inventors has not been made.[2]

Specifically, the statement in the petition that the declaration was sent to joint inventor Bentley and Cha was not made by a person with first-hand knowledge. Petitioners should provide a copy of the cover letter transmitting the supplemental declaration to the non-signing inventors or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

CONCLUSION

1. The petition is dismissed. As a petition under 37 CFR 1.183 to waive 1.175 is required rather than a petition under 37 CFR 1.47, the petition fee due is $400.00. The balance due of $200.00 will be charged to counsel's deposit account, No. 08-3284.

2. 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

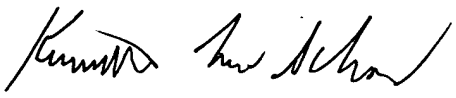
By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

---

[2] MPEP 409.03(d).

3. Telephone inquiries related to this decision only should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

4. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-9282.



Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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INTELLECTUAL PROPERTY / TECHNOLOGY LAW
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RESEARCH TRIANGLE PARK NC 27709

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OFFICE OF PETITIONS

In re Application of	:	
Bentley et al.	:	DECISION ON PETITION
Application No. 09/952,668	:	
Filed: 14 September, 2001	:	
Atty Docket No. 4115-166	:	

This is a decision on the renewed petition filed on 22 September, 2005, which is being treated as a petition under 37 CFR 1.183 seeking waiver of 37 CFR §§ 1.67 and 1.175 where it requires that a supplemental declaration be executed by a named inventor.[1]

The petition is before the Office of Patent Legal Administration for decision.

The petition is **GRANTED**.

REVIEW OF FACTS

1. On 14 September, 2001, the application was filed as an application for reissue of U.S. Patent No. 5,153,409.

2. On 24 June, 2002, a petition under 37 CFR 1.47(a) filed on 1 February, 2002, was granted with respect to joint inventor Minh-Quan Pham.

3. On 20 December, 2004, a final Office action was mailed, setting a three (3) month shortened statutory period for reply.

[1] Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply. Rather, the remedy for treating an inventor's refusal to also sign a supplemental oath or declaration is waiver of 37 CFR 1.67. See MPEP 603.

4. On 16 March, 2005, an Advisory Action and Examiner's Interview Summary was mailed, providing a one (1) month period for reply to the 20 December, 2004, final Office action.

5. On 30 March, 2005, an amendment after final rejection was filed, along with a one (1) month extension of time.

6. On 25 April, 2005, an Advisory Action was mailed, providing a one (1) month period for reply to the 20 December, 2004, final Office Action.

7. On 20 June, 2005, a Request for Continued Examination and a supplemental reissue declaration were filed, along with a two (2) month extension of time.

8. Additionally, on 20 June, 2005, a petition was also filed, whereby petitioners assert that joint inventors William E. Bentley and Hyung Joon Cha have refused to sign and return the supplemental declaration.

9. On 22 July, 2005, the petition was dismissed.

10. On 22 September, 2005, the present renewed petition was filed. Petitioners now assert that joint inventors Bentley and Minh-Quan Pham refuse to sign the supplemental declaration, while joint inventor Cha has now signed the declaration. A reissue declaration signed by Cha on behalf of himself and non-signing inventors Bentley and Pham is also enclosed therewith.

DECISION ON PETITION UNDER 37 CFR 1.183 TO WAIVE §§ 1.67 AND 1.175

In view of the efforts recounted in the petition to locate and obtain the signatures of William E. Bentley and Ming-Quan Pham on the supplemental declaration in compliance with 37 CFR 1.175, it is agreed that justice would be served by waiving the requirement for the signature of joint inventors Bentley and Pham on the supplemental declaration filed on 22 September, 2005.

CONCLUSION

1. The petition is granted.

2. As the petition fee was previously paid, no additional petition fee is due with this renewed petition. Therefore, the fee paid with the present request for reconsideration will be credited to counsel's deposit account, No. 08-3284.

3. The application is being referred to Technology Center Art Unit 1633 for further processing.

4. Telephone inquiries related to this decision only should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.

5. Inquiries regarding petition status or general petition information are handled by the Office of Petitions staff at (571) 272-3282.

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

Express Mail Label No.: [redacted]54294489US
Date of Deposit: May 1, 2002

[redacted]PATENT APPLICATION
Attorney Docket No. 23239-501 (ARCH-1)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

O I P E
MAY 0 1 2002
PATENT & TRADEMARK OFFICE
JC103

APPLICANTS :	Stanton, et al		
SERIAL NUMBER :	09/952,680	EXAMINER :	Not Yet Assigned
FILING DATE :	September 13,2001	ART UNIT :	1645
FOR :	TARGET ACTIVATED NUCLEIC ACID BIOSENSOR AND METHODS OF USING SAME		

Box Missing Parts
Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS

In response to the Notice To File Missing Parts of Nonprovisional Application mailed February 14, 2001, Applicants submit herein a replacement Sequence Listing; Statement in Support of CRF; electronic copy of Sequence Listing (1 diskette); Preliminary Amendment; Petition for One-Month Extension of Time; and payment of the One-Month Extension of Time of $55.00. This response is due on or before May 14, 2002, with a One-month extension.

The Commissioner is authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 23239-501 (ARCH-1).

Respectfully submitted,

Date: May 1, 2002

Jean M. Coughlin Reg. No. 48,593
for Ivor R. Elrifi, Reg. No. 39,529
Attorney/Agent for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

TRA 1663152v1

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
09/952,680	09/13/2001	Marty Stanton	23239-501 (Arch-1)

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
One Financial Center
Boston, MA 02111

OIPE
MAY 01 2002
PATENT & TRADEMARK OFFICE

CONFIRMATION NO. 7909

FORMALITIES LETTER

OC000000007474662

Date Mailed: 02/14/2002

09952680 - 050402

NOTICE TO COMPLY WITH REQUIREMENTS FOR PATENT APPLICATIONS CONTAINING NUCLEOTIDE SEQUENCE AND/OR AMINO ACID SEQUENCE DISCLOSURES

Applicant is given **TWO MONTHS FROM THE DATE OF THIS NOTICE** within which to file the items indicated below to avoid abandonment. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

- A copy of the "Sequence Listing" in computer readable form has been submitted. However, the content of the computer readable form does not comply with the requirements of 37 C.F.R. 1.822 and/or 1.823, as indicated on the attached copy of the marked -up "Raw Sequence Listing." Applicant must provide a substitute computer readable form (CRF) copy of the "Sequence Listing" and a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d).

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase PatentIn Software, call (703) 306-2600**
- **For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov**

A copy of this notice MUST be returned with the reply.

Customer Service Center
Initial Patent Examination Division (703) 308-1202
PART 2 - COPY TO BE RETURNED WITH RESPONSE

Express Mail Label No.: EV0[illegible]294489US
Date of Deposit: May 1, 200[illegible]

05-03-02 Mine

03CO #
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MAY 0 1 2002
PATENT & TRADEMARK OFFICE

PATENT APPLICATION
Attorney Docket No. 23239-501 (ARCH-1)

30623
PATENT TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Stanton, et al		
SERIAL NUMBER:	09/952,680	EXAMINER:	Not Yet Assigned
FILING DATE:	September 13, 2001	ART UNIT:	1645
FOR:	TARGET ACTIVATED NUCLEIC ACID BIOSENSOR AND METHODS OF USING SAME		

Box Missing Parts
Assistant Commissioner for Patents
Washington, D.C. 20231

TRANSMITTAL LETTER

Enclosed herewith are the following for the above-identified non-provisional patent application:

1. Preliminary Amendment (1 page);
2. Notice to Comply with Requirements for Patent Applications (1 page);
3. Copy of Notice to Comply with Requirements for Application(2 pages);
4. Petition for One-Month Extension of Time (1 page);
5. Paper Copy of the Sequence Listing (48 pages);
   a. Computer Readable Form Copy of the Sequence Listing (1 diskette);
   b. Statement in Support of Computer Readable Form Submission (1 page);
6. Check (#12619) in the amount of $55.00 for the extension of time fee; and
8. Return postcard.

The Commissioner is hereby authorized to charge any fee that may be due, or to credit any overpayment, to Deposit Account No. 50-0311 (Reference No. 23239-501 (ARCH-1). A duplicate copy of this transmittal letter is enclosed.

Respectfully submitted,

Sean M Coughlin

Date: May 1, 2002

Ivor R. Elrifi, Reg. No. 39,529
Sean M. Coughlin, Reg. No. 48,593
Attorney/Agent for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

TRA 1663106v1

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 15 June 2006

TO SPE OF : ART UNIT 2621

SUBJECT : Request for Certificate of Correction on Patent No.: 6862366

A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-915
Palm location **7580** - Tel. No. 305-8309

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please check Drawings

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, NO SIGNIFICANT CHANGES, NO NEW MATTER.

SPE **Art Unit** 2624

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO.: 6,862,366
DATED: March 1, 2005
INVENTOR(S): Anoop K. Bhattacharjya

It is certified that an error appears in the above identified patent and that said Letters Patent is hereby corrected as shown below:

Front page of the patent, the representative figure thereon; and

Sheet 2 of 4 of the drawing sheets.

Substitute the figure below for the corresponding figure in the patent.

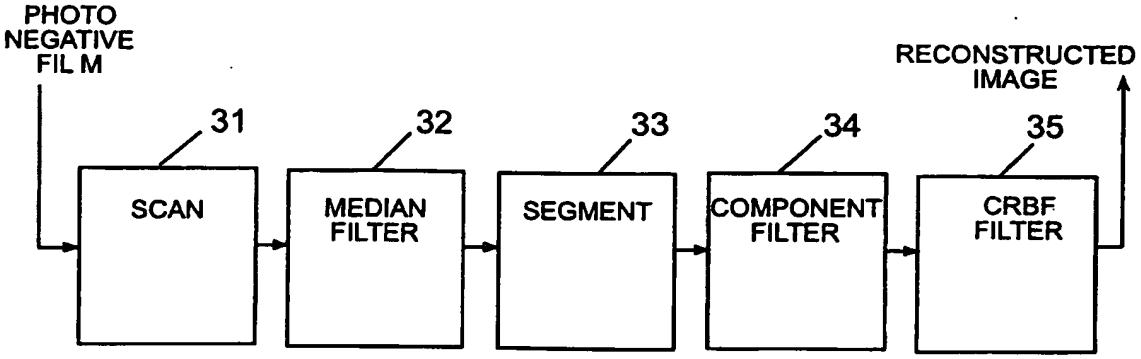


FIG. 2

9

MAILING ADDRESS OF SENDER:

Epson Research and Development, Inc.
Intellectual Property Department
150 River Oaks Parkway, Suite 225
San Jose, CA 95134
Customer No. 20178

PATENT NO. 6,862,366

FORM PTO 1050

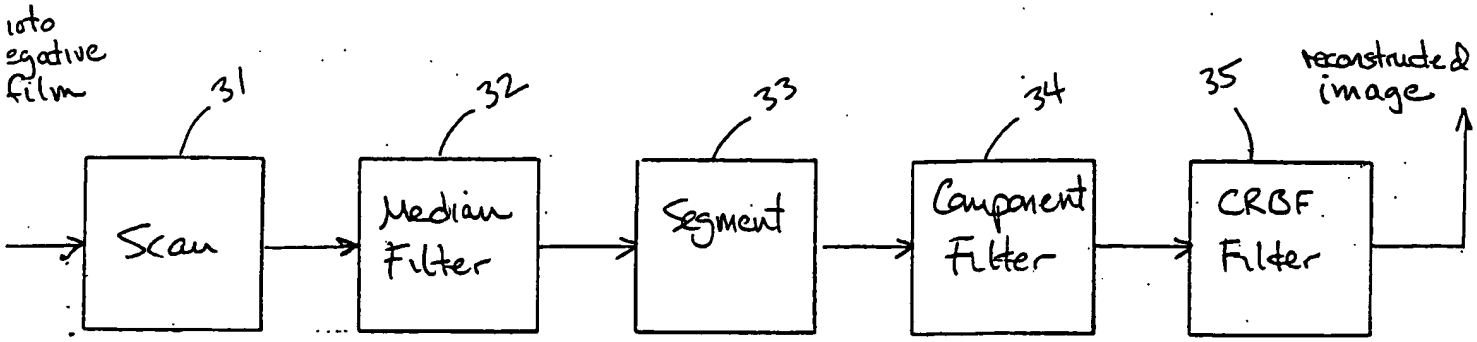


Fig. 2

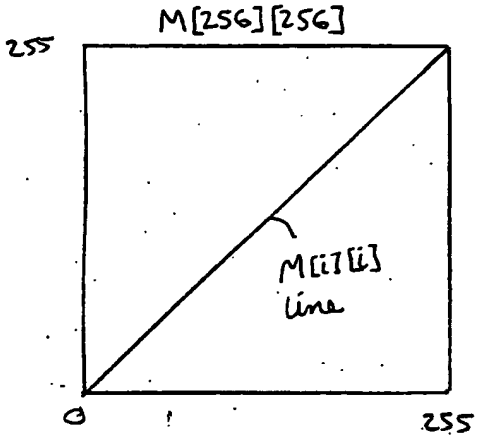


Fig. 5

APR 1 2 2005

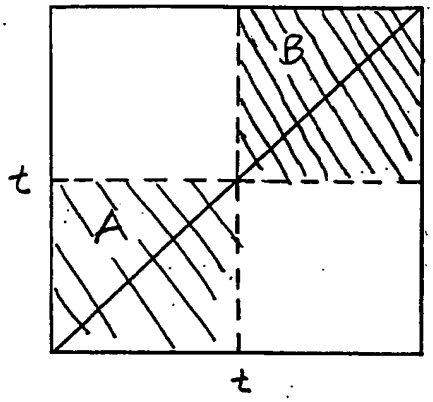


Fig. 6

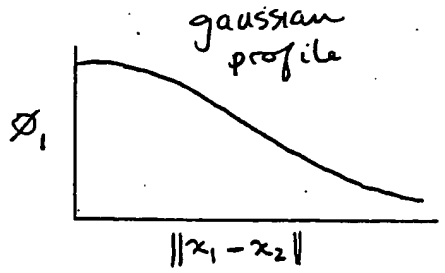


Fig. 7(a)

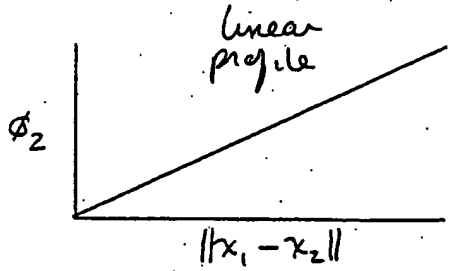
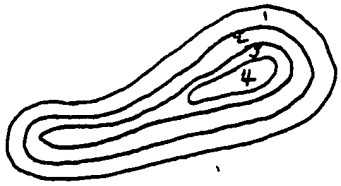


Fig. 7(b)



missing data region

Fig. 8

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 8

Charles W. Gaines
Hitt Gaines & Boisbrun, P.C.
P.O. Box 832570
Richardson, TX 75083

MAILED

JAN 31 2003

**OFFICE OF DIRECTOR
GROUP**

In re Application of
William B. Joyce
Application No. 09/952,694
Filed: September 14, 2001
For: LASER SUPPORT STRUCTURE

DECISION ON REQUEST TO
WITHDRAW FROM RECORD

This is a decision on the request to withdraw as attorney or agent of record pursuant to 37 C.F.R. § 1.36 and 37 C.F.R. § 10.40 filed via facsimile transmission on July 25, 2002.

The request is **APPROVED** for the withdrawal of all of the attorneys presently of record. The withdrawal is effective as of the date of this letter not when the request for withdrawal was filed.

The application currently has no attorney of record.

As requested, all future communications from the Office will be directed to Ms. Kyshon Rivers at the address provided below unless otherwise notified by applicant.

All inquiries relating to this decision should be directed to Edward Westin at (703) 308-4823.

Edward Westin

Edward Westin, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: Ms. Kyshon Rivers
c/o Lucent Technologies, Inc.
600 Mountain Ave., Rm. 3A 506
Murray Hill, NJ 07974-0636

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

COPY MAILED

SEP 0 5 2006

OFFICE OF PETITIONS

In re Application of :
Ferguson, et al. :
Application No. 09/952,753 :
Filed: September 13, 2001 :
Attorney Docket No. 017684-000120US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(a), filed June 20, 2006, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration or petition under 37 CFR 1.137(b) must be submitted within TWO (2) MONTHS from the mail date of this decision. Extension of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." This is **not** a final agency action within the meaning of 5 U.S.C § 704.

The above-identified application became abandoned for failure to reply to the Notice of Allowability mailed August 11, 2005, which set a statutory period for reply of three months from its mailing date. No response was received within the allowable period, and the application became abandoned on November 12, 2005. A Notice of Abandonment was mailed on February 2, 2006.

A grantable petition under 37 CFR 1.137(a)[1] must be accompanied by: (1) the required reply,[2] unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(1); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due

[1]As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

[2] In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer required by 37 CFR 1.137(c).

The instant petition lacks item (3).

The Commissioner is responsible for determining the standard for unavoidable delay and for applying that standard.

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[3]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[4]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[5]
"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[6]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[7]

---

[3]Rydeen v. Quigg, 748 F.Supp. 900, 904, 16 U.S.P.Q.2d (BNA) 1876 (D.D.C. 1990), aff'd without opinion (Rule 36), 937 F.2d 623 (Fed. Cir.1991) (citing Morganroth v. Quigg, 885 F.2d 843, 848, 12 U.S.P.Q.2d (BNA) 1125 (Fed. Cir. 1989); Ethicon, Inc. v. Quigg 849 F.2d 1422, 7 U.S.P.Q.2d (BNA 1152 (Fed. Cir. 1988) ("an agency' interpretation of a statute it administers is entitled to deference"); see also Chevron U.S.A. Inc. v. Natural Resources Defence Council, Inc., 467 U.S. 837, 844, 81 L. Ed. 694, 104 S. Ct. 2778 (1984) ("if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")

[4]Commissariat A L'Energie Atomique et al. v. Watson, 274 F.2d 594, 597, 124 U.S.P.Q. (BNA) 126 (D.C. Cir. 1960) (emphasis added).

[5]Haines v. Quigg, 673 F. Supp. 314, 316, 5 U.S.P.Q.2d (BNA) 1130 (N.D. Ind. 1987) (citing Camp v. Pitts, 411 U.S. 138, 93 S. Ct.1241, 1244 (1973) (citing 5 U.S.C. §706 (2)(A)); Beerly v. Dept. of Treasury, 768 F.2d 942, 945 (7th Cir. 1985); Smith v. Mossinghoff, 217 U.S. App. D.C. 27, 671 F.2d 533, 538 (D.C. Cir.1982)).

[6]Ray v. Lehman, 55 F.3d 606, 608, 34 U.S.P.Q2d (BNA) 1786 (Fed. Cir. 1995) (citing Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 77 L.Ed.2d 443, 103 S. Ct. 2856 (1983)).

[7]Id.

The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[8] Nonawarness of a PTO rule will not constitute unavoidable delay.[9]

Application of the standard to the current facts and circumstances

In the instant petition, petitioner maintains that the circumstances leading to the abandonment of the application meet the aforementioned unavoidable standard and, therefore, petitioner qualifies for relief under 37 CFR 1.137(a). In support thereof, petitioner asserts that drawings were filed on March 14, 2002.

With regard to item (3) above, the aforementioned argument of petitioner in support of petitioner's belief that the above-cited application was unavoidably abandoned is not persuasive. The reason petitioner's argument must necessarily fail is addressed below.

The record reflects that a Notice of Allowability was mailed on August 11, 2005, requiring corrected drawings to be filed. Petitioner states that drawings were filed on March 14, 2002, but does not state that a response to the Notice of Allowability was filed. It is not clear from the petition whether petitioner means to assert that the requirement for corrected drawings as made by the Notice of Allowability was incorrect given the drawings that were filed on March 14, 2002. Notwithstanding, once the Notice of Allowability was mailed requiring corrected drawings to be filed, petitioner was obligated to file a proper response within the statutory period set for reply. Petitioner has not demonstrated that a proper and timely response to the Notice of Allowability was filed or that the delay in filing the same was unavoidable. The petition is dismissed, accordingly.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee ($1,500.00 for a large entity and $750.00 for a verified small entity), and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

---

[8]See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

[9]See Smith v. Mossinghoff, 671 F.2d 533, 538, 213 U.S.P.Q. (BNA) 977 (Fed. Cir. 1982) (citing Potter v. Dann, 201 U.S.P.Q. (BNA) 574 (D.D.C. 1978) for the proposition that counsel's nonawarness of PTO rules does not constitute "unavoidable" delay)). Although court decisions have only addressed the issue of lack of knowledge of an attorney, there is no reason to expect a different result due to lack of knowledge on the part of a pro se (one who prosecutes on his own) applicant. It would be inequitable for a court to determine that a client who spends his hard earned money on an attorney who happens not to know a specific rule should be held to a higher standard than a pro se applicant who makes (or is forced to make) the decision to file the application without the assistance of counsel.

Deposit account 20-1430 will be charged $250.00 for the instant petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries regarding this decision should be directed to the undersigned (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

Enclosure: Form PTO/SB/64

PTO/SB/64 (07-06)
Approved for use through 09/30/2006. 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.

PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)

Docket Number (Optional)

First named inventor:

Application No.: Art Unit:

Filed: Examiner:

Title:

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:
(1) Petition fee;
(2) Reply and/or issue fee;
(3) Terminal disclaimer with disclaimer fee - required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
(4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee $ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☐ Other than small entity – fee $ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of _____(identify type of reply):

☐ has been filed previously on _____.
☐ is enclosed herewith.

B. The issue fee and publication fee (if applicable) of $ _____.

☐ has been paid previously on _____.
☐ is enclosed herewith.

This collection of information is required by 37 CFR 1.137(b). The information is required to obtain or retain a benefit by the public which 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 1.0 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: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

3. Terminal disclaimer with disclaimer fee

☐ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of $ _____ for a small entity or $ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

_____ _____
Signature Date

_____ _____
Typed or printed name Registration Number, if applicable

_____ _____
Address Telephone Number

_____
Address

Enclosures: ☐ Fee Payment

☐ Reply

☐ Terminal Disclaimer Form

☐ Additional sheets containing statements establishing unintentional delay

☐ Other:_____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

☐ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office as (571) 273-8300.

_____ _____
Date Signature

_____
Typed or printed name of person signing certificate

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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TWO EMBARCADERO CENTER
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SAN FRANCISCO, CA 94111-3834

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OFFICE OF PETITIONS

In re Application of

Ferguson, et al.

Application No. 09/952,753

Filed: September 13, 2001

Attorney Docket No. 017684-000120US

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), September 22, 2006, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely file corrected drawings as required by the Notice of Allowability (the "Notice") mailed August 11, 2005. The Notice set forth a three (3) month statutory period for reply. No response was received within the allowable period. Accordingly, this application became abandoned on November 12, 2006. A Notice of Abandonment was mailed on February 2, 2006.

Corrected drawings were received on September 22, 2006.

The application is being forwarded to the Office of Patent Publications for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 8-24-05

TO SPE OF : ART UNIT 2124

SUBJECT : Request for Certificate of Correction on Patent No.:
A response is requested with respect to the accompanying request for a certificate of correction.

Please complete this form and return with file, within 7 days to:
Certificates of Correction Branch - PK 3-922 South Tower 9A22
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.

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:

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE **Art Unit**

PTO/SB/44 (10-96)
Approved for use through 6/30/99. OMB 0651-0033
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

(Also Form PTO-1050)

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

Approved to enter OM 8/30/2005

PATENT NO : 6,920,472 B2

DATED : 19 July 2005

INVENTOR(S): G. William Walster and Eldon R. Hansen

It is certified that an error appears in the above-identified patent and that said Letters Patent are hereby corrected as shown below:

In the abstract (at line 19), please delete the word "fevaluated" and replace

with the words --f evaluated--

In the abstract (at line 15),
In the abstract (at line 18),
In the summary (at column 3, line 14),
In the summary (at column 3, line 16),
In the detailed description (at column 7, line 37),
In the detailed description (at column 7, line 38),
In the detailed description (at column 7, line 41),
In claim 1 (at column 8, line 51),
In claim 1 (at column 8, line 54),
In claim 9 (at column 9, line 42),
In claim 9 (at column 9, line 45),
In claim 17 (at column 10, line 40),
In claim 17 (at column 10, line 45),

please delete the term, "$f^1(x)$" and replace with the term --$f'(x)$--.

MAILING ADDRESS OF SENDER:
Edward J. Grundler
Park, Vaughan & Fleming LLP
2820 Fifth Street
Davis, CA 95616

PATENT NO: 6,920,472 B2

Davis, CA 95616

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, Patent and Trademark Office, Washington DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450.

AUG 12 2005

SPE K. Chaki

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 09/952,760

Paper No.: _____

DATE : 6/17/05

TO SPE OF : ART UNIT ~~2124~~ 2193

SUBJECT : Request for Certificate of Correction on Patent No.: 6895422

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

Thank You For Your Assistance

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:

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

Kaka Chaki 2/93

SPE **Art Unit**

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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ALEXANDRIA, VA 22313-1450
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NOV 19 2003

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Application of	:
William Pollack	:
Serial No.: 09/952,778	: PETITION TO MAKE SPECIAL
Filed: September 13, 2001	:
Attorney Docket No.: 021199-000110	:

This is in response to applicants' petition filed September 15, 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. 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, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (703) 308-3824 or by facsimile transmission at (703) 305-3599.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 8

Carr & Ferrell LLP
2225 East Bayshore Road
Suite 200
Palo Alto, CA 94303

MAILED

JUL 1 5 2002

Technology Center 2100

In re Application of:
Graham Bromley, et al.
Application No. 09/952,780
Filed: September 13, 2001
For: MAPPING DRIVER FOR USE IN DATA BACKUP SYSTEMS

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed June 17, 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 signer of the petition, Matthew J. Cohen, is not appointed as an attorney or agent of record. Therefore, he is not authorized to act on behalf of the attorneys of record, nor can he effect a change of address.

Accordingly, the request is **DENIED**.

All future communications from the United States Patent and Trademark Office (Office) will continue to be directed to the above-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software,
and Electronic Commerce
(703) 305-9750

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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Andrew; G. Rozycki
Attorney for Applicants
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7000 Cardinal Place
Dublin OH 43017

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DEC 19 2006
OFFICE OF PETITIONS

In re Application of :
Plishka et al. :
Application No. 09/952,781 : ON PETITION
Filed: September 13, 2001 :
Attorney Docket Number: Spec-7117

This is a decision on the petition under 37 CFR 1.137(b), filed October 30, 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 February 27, 2006. 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 May 28, 2006. A Notice of Abandonment was mailed on September 13, 2006.

This petition is hereby **Granted**.

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). 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 present petition was ever given a power of attorney or authorization of agent to prosecute the above-identified

application. A review of Office records shows that the McGaw Park, Il is not the current correspondence address of record. Since petitioner is not an attorney of record, the change of correspondence address cannot be entered. If the person signing the present petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted.

The office hereby acknowledges the receipt of the amendment submitted with the instant petition.

This application is being forwarded to Technology Center 3700 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: Timothy Czaja
Dicke, Billig & Czaja, PLLC
Fifth Street Towers, Suite 2250
100 South Fifth Street
Minneapolis, MN 55402

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OFFICE OF PETITIONS

CareFusion Corp./BHGL
P.O. Box 10395
Chicago IL 60610

In re Application of :
Plishka, et al. :
Application No. 09/952,781 : DECISION ON APPLICATION
Filed: September 13, 2001 : FOR
Atty Docket No. 13990-80 (SPC-7117-US : PATENT TERM ADJUSTMENT

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(b)," filed August 28, 2009. Applicants request that the initial Determination of Patent Term Adjustment under 35 U.S.C. 154(b) be corrected from four hundred and ninety-six (496) days to one thousand, one hundred and sixty-nine (1,169) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PALM and PAIR screens to reflect that the patent term adjustment determination at the time of the mailing of the notice of allowance is **one thousand, one hundred and sixty-nine** (1,388 days of Office delay - 219 days of applicant delay). A copy of the updated PAIR screen, showing the corrected determination, is enclosed.

On June 10, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 496 days. Applicants timely filed the instant application for patent term adjustment.[1]

Applicants dispute the reduction of 676 days for applicant delay in responding to the Notice to File Missing Parts of Non-Provisional Application mailed October 12, 2001. Specifically, applicants states:

[1] PALM finance records indicate the issue fee was paid on August 28, 2009.

> In the present application, a Notice to File Missing Parts of Nonprovisional Application was mailed on October 12, 2001 (attached as Exhibit C). The 3 month date was therefore January 12, 2002. A response by the Applicant's attorney to the Notice to File Missing Parts of Non-Provisional Application was filed with the U.S. Patent and Trademark Office on January 15, 2002, as evidenced by the PAIR PTA History (Exhibit B). Thus only 3 days of delay should have been attributed to Applicant based on the response.
>
> However, a Notice to File Corrected Application Papers was improperly issued by the USPTO on July 12, 2002 (attached as Exhibit D). The Notice to File Corrected Application Papers was withdrawn by the USPTO on December 3, 2003 (see Withdrawal of Previously Sent Notice (With Filing receipt) attached as Exhibit E). The PAIR PTA History (Exhibit B) alleges Applicant delay until November 19, 2003 (when a copy of already-filed drawings was re-filed in response to the improper an later-withdrawn Notice to File Corrected Application papers). As a result, Applicant was charged with 676 days of delay (January 12, 2002- November 19, 2003), when the correct total of Applicant delay was only 3 days.

Excerpt taken from the "Request for Reconsideration of Patent Term Adjustment Pursuant to 37 CFR § 1.705(b)", filed August 28, 2009, page 2-3.

Applicants' arguments have been considered and are well-taken. At the outset, it is noted that a reduction to the patent term adjustment of 3 days should have been entered pursuant to 37 CFR 1.704(b) for the filing of response on January 15, 2002, three months and three days after the Notice to File Missing Parts of Non-Provisional Application was mailed on October 12, 2001. Accordingly, a period of reduction to the patent term adjustment of 3 days will be entered.

A review of the record also supports a conclusion that the reduction of 676 days disputed by applicants is not warranted. This conclusion is not based upon applicants' argument that the Notice to File Corrected Application Papers was improperly issued. Rather, it is because applicants filed a complete response to the Notice to File Missing Parts of Non-Provisional Application on January 15, 2002. The 676-day period of reduction under 37 CFR 1.704(b) was calculated from the day

after the date that is three months from the mailing of the Notice to File Missing Parts of Non-Provisional Application, January 13, 2002, until a paper was filed on November 19, 2003. The paper filed November 19, 2003, is a copy of the response filed January 15, 2002, to the Notice to File Missing Parts of Non-Provisional Application Papers mailed October 12, 2001. The response filed January 15, 2002, tolled the time period running against the applicants pursuant to 37 CFR 1.704(b). Thus, the Office should not have assessed applicants a delay of 676 days pursuant to 37 CFR 1.704(b) for the paper filed November 19, 2003. Accordingly, the period of reduction to the patent term adjustment of 676 days is being removed.

In view thereof, the patent term adjustment at the time of the mailing of the Notice of Allowance is 1,169 days.

The $200.00 fee as set forth in 37 CFR 1.18(e) will be charged to deposit account 23-1925. No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The address cited on the petition differs from the address of record. A courtesy copy of this decision is being mailed to the address cited on the petition. All future correspondence will be mailed solely to the address of record unless appropriate written instructions to the contrary are received.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Kenya A. McLaughlin, Petitions Attorney, at (571) 272-3222.

Anthony Knight
Director
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

cc:
Trevor K. Copeland
Brinks Hofer Gilson & Lione
PO Box 10395
Chicago, IL 60610

PTA Calculations for Application: 09/952781			
Application Filing Date:	09/13/2001	PTO Delay (PTO):	1388
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	892
Post-Issue Petitions:	0	Total PTA (days):	1169
PTO Delay Adjustment:	673		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
74	05/08/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	673		
64	06/10/2009	MAIL NOTICE OF ALLOWANCE	54		55
63	06/09/2009	ISSUE REVISION COMPLETED			
62	06/09/2009	DOCUMENT VERIFICATION			
61	06/09/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	06/08/2009	NOTICE OF ALLOWABILITY			
56	12/29/2008	DATE FORWARDED TO EXAMINER			
55	12/17/2008	AMENDMENT AFTER FINAL REJECTION			
54	12/17/2008	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
53	12/16/2008	CORRESPONDENCE ADDRESS CHANGE			
52	11/12/2008	MAIL PRE-EXAM NOTICE			
51	09/30/2008	MAIL FINAL REJECTION (PTOL - 326)	304		45
50	09/29/2008	FINAL REJECTION			
49	11/20/2001	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
48	02/11/2003	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
47	03/11/2008	CASE DOCKETED TO EXAMINER IN GAU			
46	08/08/2007	DATE FORWARDED TO EXAMINER			
45	08/01/2007	RESPONSE TO ELECTION / RESTRICTION FILED			
44	08/01/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
43	05/15/2007	MAIL RESTRICTION REQUIREMENT	76		40
42	05/11/2007	REQUIREMENT FOR RESTRICTION / ELECTION			
41	03/07/2007	DATE FORWARDED TO EXAMINER			
40	10/30/2006	RESPONSE AFTER NON-FINAL ACTION		156	29

39	03/06/2007	MAIL NOTICE OF RESCINDED ABANDONMENT			
38	03/06/2007	NOTICE OF RESCINDED ABANDONMENT IN TCS			
37	12/19/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
36	10/30/2006	PETITION ENTERED			
35	09/13/2006	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
34	09/08/2006	ABAND. FOR FAILURE TO RESPOND TO O. A.			
33	02/11/2003	REFERENCE CAPTURE ON IDS			
32.7	02/11/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	02/11/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	11/20/2001	REFERENCE CAPTURE ON IDS			
30.7	11/20/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
30	11/20/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	02/27/2006	MAIL NON-FINAL REJECTION			
28	02/21/2006	NON-FINAL REJECTION			
27	12/07/2005	DATE FORWARDED TO EXAMINER			
26	11/23/2005	RESPONSE AFTER NON-FINAL ACTION		60	24
25	11/23/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	06/24/2005	MAIL NON-FINAL REJECTION	954		-1
23	05/26/2005	NON-FINAL REJECTION			
22	03/02/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	10/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
20	09/01/2004	TRANSFER INQUIRY TO GAU			
19	02/18/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
18	12/03/2003	APPLICATION IS NOW COMPLETE			
17	12/03/2003	APPLICATION DISPATCHED FROM OIPE			
16	12/03/2003	APPLICATION IS NOW COMPLETE			
15	11/19/2003	ADDITIONAL APPLICATION FILING FEES		676	5
14	07/12/2002	PRE-EXAM OFFICE ACTION WITHDRAWN			
13	11/19/2003	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
9	01/15/2002	ADDITIONAL APPLICATION FILING FEES			

8	01/15/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
7	01/15/2002	APPLICANT HAS SUBMITTED NEW DRAWINGS TO CORRECT CORRECTED PAPERS PROBLEMS			
6	07/11/2002	PRE-EXAM OFFICE ACTION WITHDRAWN			
5	10/12/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	10/11/2001	CORRESPONDENCE ADDRESS CHANGE			
2	09/21/2001	IFW'SCAN & PACR AUTO SECURITY REVIEW			
1	09/13/2001	INITIAL EXAM TEAM NN			

Search Another: Application# [ ] Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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SEP 07 2007

OFFICE OF PETITIONS

In re Application of :
Carl A. Waldspurger :
Application No. 09/952,796 : ON PETITION
Filed: September 12, 2001 :
Attorney Docket No. Vmware13 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 1, 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 July 14, 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)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is October 15, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $790, and the submission required by 37 CFR 1.114; (2) the petition fee of $1500; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-1642.

This application is being referred to Technology Center AU 2157 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.

April M. Wise
Petitions Examiner
Office of Petitions

PTO/SB/66 (03-09)
Approved for use through 03/31/2012. OMB 0651-0016
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6,786,465	2004-09-07	09/952,841	2001-09-13	B0011/7003

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Mark D. Lorusso/	Date (YYYY-MM-DD)	2010-07-12
Name	Mark D. Lorusso	Registration Number	41955

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

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In re Patent No. 6786465
Issue Date: September 7,2004
Application No. 09952841
Filed: September 13,2001
Attorney Docket No. B0011/7003

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed July 12,2010 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of July 12,2010 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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Paper No. 5

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OFFICE OF PETITIONS

In re Application of
Bassom Baroudi
Application No. 09/952,847
Filed: September 11, 2001
Attorney Docket No. OUTRP001

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137(f)

This is a decision on the "Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f)," filed May 14, 2003.

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed on August 23, 2002, in a foreign country, or under a multinational international treaty, that requires publication of applications eighteen months after filing. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the foreign or international application[1].

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country, or under a multilateral international agreement, that requires publication of applications 18 months after filing.

A petition under 37 CFR 1.137(f) must be accompanied by:

(1) the reply, which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

[1] A Rescission of Nonpublication Request was filed on September 10, 2002. However, it was not accompanied by a Notice of Foreign Filing.

as provided by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) has been rescinded. The above-identified application was published on March 13, 2003.

The application is being forwarded to Technology Center 2123 for examination in due course.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 20231
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Paper No. 13

MEDLEN & CARROLL
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

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JAN 23 2003

OFFICE OF PETITIONS

In re Application of	:	
Jorma Isola et al	:	
Application No. 09/952,851	:	DECISION GRANTING STATUS
Filed: September 14, 2001	:	UNDER 37 CFR 1.47(A)
For: IN-SITU HYBRIDIZATION PROBES	:	
AND THERAPY DIAGNOSTICS	:	

This is in response to the petition under 37 CFR 1.47(a), filed March 4, 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.

After this decision is mailed, petitioner's deposit account No. 08-1290, will be charged the required $130 petition fee.

Telephone inquiries regarding this decision should be directed to Petitions Examiner Wan Laymon at (703) 306-5685.

This application is being forwarded to the Office of Initial Patent Examination for preexamination processing.

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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TERO JARVINEN
33560 SILMAKKEENKATU 5E
TAMPERE, FINLAND

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JAN 23 2003

OFFICE OF PETITIONS

In re Application of
Isola; Tanner; Jarvinen; Shi; and Wu
Application No. 09/952,851
Filed: September 14, 2001
For: IN-SITU HYBRIDIZATION PROBES AND CANCER THERAPY DIAGNOSTICS

Dear Mr. Jarvinen:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Wan Laymon at (703) 306-5685. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
MEDLEN & CARROLL
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

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INTELLECTUAL PROPERTY & STANDARDS
3400 W. PLANO PARKWAY, MS LEGL2
PLANO TX 75075

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JAN 19 2010

In re Application of	:	
Paul A. JOHNSON	:	
Application No. 09/952,856	:	DECISION ON PETITION
Filed: September 12, 2001	:	
Attorney Docket No. 135885	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 24, 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 June 22, 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 August 23, 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(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 (1).

Petitioner failed to file an appeal brief (and fee required by 37 CFR 41.20(b)(2).

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.

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) 272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JESSICA SMITH**
GARLICK, HARRISON & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716--072

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OFFICE OF PETITIONS

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ALCATEL-LUCENT USA INC.
600-700 MOUNTAIN AVENUE
MURRAY HILL NJ 07974-0636

In re Application of	:	
Paul A. JOHNSON	:	
Application No. 09/952,856	:	DECISION ON PETITION
Filed: September 12, 2001	:	
Attorney Docket No. 135885	:	

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed May 19, 2010, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned as a result of petitioner's failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As an appeal brief (and appeal brief fee) was not filed within two (2) months of the Notice of Appeal filed June 22, 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 August 23, 2006. *See* MPEP 1215.04.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of $1,620.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Appeal filed June 22, 2006 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 the undersigned at (571) 272-2431.

This application is being referred to Technology Center AU 2151 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.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

cc: **JESSICA SMITH**
GARLICK, HARRISON & MARKISON
P.O. BOX 160727
AUSTIN, TX 78716--0727

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No: __

VERTEX PHARMACEUTICALS
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JUN 19 2006

OFFICE OF PETITIONS

In re Application of :
Davies, et al. :
Application No. 09/952,875 : ON PETITION
Filed: 14 September, 2001 :
Attorney Docket No. VPI/00-129-6 US :

This is a decision on a petition filed on 24 April, 2006, 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 non-final Office action mailed on 2 December, 2004, with reply due absent extension of time on or before 2 March, 2005;
- the instant application went abandoned by operation of law after midnight 2 March, 2005;
- the Office mailed the Notice of Abandonment on 16 June, 2005;
- Petitioner filed the instant petition on 24 April, 2006, with, *inter alia*, a reply in the form of an amendment, and made the statement of unintentional delay–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

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply,

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[1] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[2] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[3] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[4] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[5] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[6] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

The record (including the petition filed on 24 April, 2006) does not necessitate a finding that the delay between midnight 2 March, 2005 (date of abandonment), and 24 April, 2006 (date of filing of grantable petition), was not unintentional.

Rather, the Patent and Trademark Office is relying in this matter on the duty of candor and good faith of Applicants (Davies and Li) and their Counsel/Petitioner (Jennifer G. Che (Reg. No. 58,035) and Lisa A. Dixon (Reg. No. 40,995)) when accepting Petitioner's representation that the delay in filing the response was unintentional.[7]

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 the Examiner in Technology Center 1600 for further processing 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

[7] See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing the statement required by 37 C.F.R. §1.137(b) to the Patent and Trademark Office).

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VERTEX PHARMACEUTICALS INCORPORATED
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OFFICE OF PETITIONS

In re Application of :
Robert Davies, et. al. :
Application No. 09/952,875 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. VPI/00-129-6 US :

This is a decision on the petition under 37 CFR 1.137(b), filed on July 24, 2008, to revive the above-identified application.

The application became abandoned for failure to respond to the Notice of Allowance and Fee(s) Due mailed February 26, 2008. A Notice of Abandonment was mailed on June 24, 2008.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Jennifer G. Che appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party on whose behalf she acts.

Additionally, it is not apparent whether the statement of unintentional delay was signed by a person who would have been in a position of knowing that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Nevertheless, in accordance with 37 CFR 10.18, the statement is accepted as constituting a certification of unintentional delay. However, in the event that petitioner has no knowledge that the delay was unintentional, petitioner must make such an inquiry to ascertain that, in fact, the delay was unintentional. If petitioner discovers that the delay was intentional, petitioner must so notify the Office.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $1,440 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $1,540; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Data Management for further processing into a patent.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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Paper No. 8

Andrew S. Marks, Esq.
VERTEX PHARMACEUTICALS INCORPORATED
130 Waverly Street
Cambridge, MA 02139-4242

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SEP 0 8 2004

OFFICE OF PETITIONS

In re Application of :
David Bebbington, et al. :
Application No. 09/952,878 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. VPI/00-129-2 US :

This is a decision on the petition under 37 CFR 1.137(b), filed April 22, 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 forwarded to the Office of Initial Patent Examination for further processing.

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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2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

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OFFICE OF PETITIONS

In re Patent of :
Becker :
Patent No. 6,869,658 :
Issue Date: March 22, 2005 : Decision on Request
Application No. 09/952,885 :
Filing Date: September 12, 2001 :
Attorney Docket No. STERN4.001AUS :

This is a decision on the request filed November 10, 2005 (certificate of mailing date November 8, 2005) under 37 CFR 3.81(b) to accept the correction of the assignee data after the patent has issued.

The request under 37 CFR 3.81(b) is **granted**.

37 CFR 3.81(b) currently states:

> 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.

In other words, the request under 37 CFR 3.81(b) will be granted when:

(1) a request under 37 CFR 3.81 and the fee set forth in 37 CFR 1.17(i) are filed,
(2) the assignment was submitted for recordation prior to issuance of the patent, and
(3) a request for a certificate of correction and the fee set forth in 37 CFR 1.20(a) are submitted.

Petitioner has met the requirements set forth above. Therefore, the request is granted.

The file is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

Telephone inquiries should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley
Petitions Attorney
Office of Petitions

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St. Louis, MO 63006

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SEP 0 7 2005

OFFICE OF PETITIONS

In re Application of:
HANSEN et al.
Application No.: 09/952,888
Filing Date: September 15, 2001
Attorney's Docket No.: 3368/1 US
For: 2-AMINO-2-ALKYL-3 HEPTENOIC AND HEPTYNOIC ACID DERIVATIVES USEFUL AS NITRIC OXIDE SYNTHASE INHIBITORS

DECISION ON PETITION FOR REVIVAL OF ABANDONED APPLICATION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed March 25, 2005 to revive the above-entitled application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a proper reply in a timely manner to the non-final Office action mailed June 14, 2004, which set a shortened statutory period for reply of three (3) months. A response was not filed and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on September 15, 2004.

37 CFR 1.137(b) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. Since the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b) (3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.37(b)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The present petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a response to the Office action mailed June 14, 2004; (2) the petition fee; and (3) an adequate statement of unintentional delay have been received. Accordingly, the reply to the Office action of March 25, 2005 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Attorney-Advisor, Anthony Smith at (571) 272-3298 or in his absence, the undersigned at (571) 272-3217.

The application is being referred back to GAU 1621 further processing.

Frances Hicks for

Brian Hearn
Petitions Examiner
Office Of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Commissioner for Patents
United States Patent and Trademark Office
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F.M. FLIEGEL
P.O. BOX 115
SPOKANE WA 99210-0115

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MAR 1 0 2009

OFFICE OF PETITIONS

In re Application of	:	
Yoshimasa Horibe	:	
Application No. 09/952,892	:	DECISION ON PETITION
Filed: September 11, 2001	:	
Attorney Docket No. HO62-001	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 5, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely and properly reply to the final Office action mailed August 8, 2007. A three-month extension of time under the provisions of 37 CFR 1.136(a) was timely obtained. Accordingly, this application became abandoned on February 9, 2008. A Notice of Abandonment was mailed September 30, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of $405.00 and the submission required by 37 CFR 1.114; (2) the petition fee of $810.00; and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Joan Olszewski at (571) 272-7751.

The file is now being forwarded to Technology Center 2157 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

/Liana Walsh/
Liana Walsh
Petitions Examiner
Office of Petitions

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PATENT & TRADEMARK OFFICE

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UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY OF COMMERCE AND
COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, DC 2023

April 23, 2003

RECEIVED
JUN 12 2003
TC 1700

Michael K. Dixon
Akerman Senterfitt
Suite 400
West Palm Beach, FL 33401-6183

In re application of:
Hammond, Scot M. DECISION ON PETITION
Serial No.: 09/952,911
Filed: September 14, 200l
For: WATER RECYCLING SYSTEM AND METHOD

This is a decision on the petitions received on March 10, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed October 15, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned December 18, 2001.

On March 10, 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 November 15, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice of Missing Parts on November 15, 200l. The application will be completed with the documents received on March 10, 2003.

The petition is hereby Granted.

The application has been completed for release to Technology Center 1723.

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

#3

April 23, 2003

Michael K. Dixon
Akerman Senterfitt
Suite 400
West Palm Beach, FL 33401-6183

In re application of:
Hammond, Scot M. DECISION ON PETITION
Serial No.: 09/952,911
Filed: September 14, 200l
For: WATER RECYCLING SYSTEM AND METHOD

This is a decision on the petitions received on March 10, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed October 15, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned December 18, 2001.

On March 10, 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 November 15, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice of Missing Parts on November 15, 200l. The application will be completed with the documents received on March 10, 2003.

The petition is hereby Granted.

The application has been completed for release to Technology Center 1723.

The office regrets any inconvenience this may have caused the client.

Telephone inquiries concerning this matter may be directed to Doshie E. Day (703) 308-3640.

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

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530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

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MAR 0 1 2007

OFFICE OF PETITIONS

In re Application of :
Anthony C. Gaeta, et al :
Application No. 09/952,931 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. D-3128CC :

This is a decision on the petition under 37 CFR 1.137(b) to revive the above-identified application, filed November 8, 2006.

The petition is GRANTED.

The above-identified application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision on August 29, 2006 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the-above-identified application became abandoned after midnight October 25, 2006. See MPEP 1214.06. A Notice of Abandonment was mailed November 8, 2006.

This application is being revived solely for purposes of continuity with Application No. 11/594,909, a continuation application under 37 CFR 1.53(b), filed November 8, 2006. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/594,909.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3204.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 7

KING & SPALDING
191 Peachtree Street, N.E.
Atlanta, GA 30303-1763

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SEP 2 5 2002

Technology Center 2100

In re Application of: James PG Dalton, Jr., et al.
Application No. 09/952,938
Filed: September 11, 2001
For: CLEARINGHOUSE SERVER FOR INTERNET TELEPHONY AND MULTIMEDIA COMMUNICATIONS

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

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 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

UNITED STATES 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

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DEC 17 2003

OFFICE OF PETITIONS

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

In re Application of
Azcarte al.
Application No. 09/952,954
Filed: September 13, 2001
Attorney Docket Number: TI-28913
Title of Invention: BROKEN DIE DETECT SENSOR

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR §1.47(a), filed September 13, 2001.

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR §1.47(a)," and should address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventors. 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 September 13, 2001, with a partially executed declaration. A petition under 37 CFR 1.47(a) was filed with the initial disclosure. Pursuant to petitioner's request deposit account 20-0668 is being charged the $130.00 petition fee.

A grantable petition under 37 CFR §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116 ; (3) the petition fee; and, (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) as set forth above.

As to item (1), Rule 47 applicant has failed to provide any facts that would prove diligent effort was made to reach inventor Azcarate. See MPEP 409.03(d). Applicant has only provided a copy of a Federal Express bill which indicates inventor Azcarate moved. Additional efforts need to be demonstrated to illustrate diligent effort. Rule 47 applicant may wish to consult telephone directories, the Internet, national registries etc. Other steps applicant may wish to take include an electronic search, verifying with co-inventors whether inventor Azcarate left a forwarding address or telephone number, and checking in employment records for alternative contact information.

Applicant should present copies of documentary evidence that support a finding that the non-signing inventor could not be found or reached and the steps taken to locate the non-signing inventor. If applicant provides sufficient evidence that diligent effort has been made to locate the inventor and inventor can not be located, 47 applicant is not required to send a copy of the application.

Petitioner has established that inventor Rosete refuses to execute the application 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
By delivery service: (FedEx, UPS, DHL, etc.)	U.S. Patent and Trademark Office 2011 South Clark Place Customer Window, Mail Stop Petition Crystal Plaza Two, Lobby, Room 1B03 Arlington, VA 22202

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 8

TEXAS INSTRUMENTS INCORPORATED
P O BOX 655474, M/S 3999
DALLAS, TX 75265

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MAR 1 8 2004

OFFICE OF PETITIONS

In re Application of
Ronald B. Azcarate, Alwin Rosete and Jong A Foronda, Jr.
Application No. 09/952,954
Filed: September 13, 2001
Attorney Docket Number: TI-28913

DECISION

This is in response to the renewed petition under 37 CFR 1.47(a), filed February 18, 2004.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary and the petition is considered to be 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 further consideration under 37 CFR 1.47(a).

This application will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 306-0251.

Charlema R. Grant
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

NOV - 1 2001

Paper No. 3

In re Application of	:	
Mary Lasko et al.	:	
Serial No. 09/952,956	:	DECISION ON PETITION
Filed: September 14, 2001	:	TO MAKE SPECIAL
For: TRIVIA GAME AND METHOD	:	
FOR PLAY	:	

Applicant's petition, filed September 14, 2001, requests that this application be rendered special for examination in that applicant is over sixty-five (65) years of age.

The petition has been reviewed and is found to be in compliance with the requirements for special status as set forth in Section 708.02(IV) of the Manual of Patent Examining Procedure (MPEP).

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Squire, Sanders & Dempsey LLP
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

DUANE MORRIS, LLP
P.O. BOX 5203
PRINCETON, NJ 08543-5203

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JUN 27 2005

OFFICE OF PETITIONS

In re Application of :
David K. Price, et. al. :
Application No. 09/952,990 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. HARTFORD-SEMCI :

This is a decision on the petition under 37 CFR 1.137(b), filed April 12, 2005, to revive the above-identified application.

In response to the non-final Office action mailed June 21, 2004, petitioner hereby submits $1,500 for the petition to revive fee, an amendment, an Information Disclosure Statement (IDS), drawings, and the statement of unintentional delay as required by 37 CFR 1.137(b). As authorized, the $1,500 petition fee has been charged to petitioner's deposit account.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $1,590 extension of time submitted on January 21, 2005 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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 referred to Technology Center Art Unit 2176, for review of the amendment filed with the instant petition.

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: Duane Morris, LLP
380 Lexington Avenue
New York, NY 10167

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

Howard IP Law Group
P.O. Box 226
Fort Washington, PA 19034

Mail Date: 04/21/2010

Applicant	: David K. Price	: DECISION ON REQUEST FOR
Patent Number	: 7657833	: RECALCULATION of PATENT
Issue Date	: 02/02/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/952,990	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/14/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1354** 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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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

NOTICE OF WITHDRAWAL
FROM ISSUE
Under 37 1.313(b)

MAIL

JUN 2 3 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of
Manohar K. Prabhu
Application No. 09/952,994
Filed: 9/14/2001
Attorney Docket Number: HP-10015426
For: PREEMPTIVE WRITE BACK CONTROLLER

The above-identified application is withdrawn from issue after payment of the issue fee to determine patentability. 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 Peter Wong 571-272-1400.

The above-identified application is being forwarded to the examiner for prompt appropriate action, including notifying applicant of the new status of this application.

PETER WONG,
Director, Technology Center 2100
Computer Architecture, Software
And Electronic Commerce

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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INTELLECTUAL PROPERTY MANAGEMENT
BOEING MANAGEMENT COMPANY
P.O. BOX 2515
MAIL CODE 110-SD54
SEAL BEACH, CA 90740-1515

Mail Date: 04/20/2010

Applicant	: Tuan A. Dao	: DECISION ON REQUEST FOR
Patent Number	: 7602818	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/953,057	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 09/14/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1622** 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.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV381800364US, in an envelope addressed to: Mail Stop Issue Fee, Commissioner for Patents, Alexandria, VA 22313-1450, on the date shown below.

Dated: October 7, 2004 Signature: Janet Hollrah
(Janet Hollrah)

OIPE
OCT 07 2004
PATENT & TRADEMARK OFFICE

Docket No.: 249212014600
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Justin J. KOLLER et al.

Application No.: 09/953,060 Group Art Unit: 2651

Filed: September 14, 2001 Examiner: A. Faber

For: PROGRAMMABLE WRITE EQUALIZATION CIRCUIT

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. § 1.181

M/S: Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants respectfully request withdrawal of holding of abandonment of the above-identified application. It is respectfully submitted that the issue fee transmittal authorizing payment of the issue and publication fees from a deposit account was timely transmitted on July 16, 2004.

Pursuant to 37 C.F.R. §§ 1.8 (b) and 1.181(a), the following statement of facts are provided in support of this petition:

1. Applicants are promptly informing the U.S. Patent and Trademark Office ("USPTO") of the previously transmitted issue fee transmittal after becoming aware that the USPTO has no evidence of receipt of the issue and publication fees.

Applicants became aware of the non-receipt of the issue and publication fees on October 1, 2004. On October 1, 2004, Applicants received the Notice of Abandonment dated September 20, 2004. The Notice of Abandonment states that the above-identified application is abandoned for failure to timely pay the issue and publication fees within 3 months of the mailing date of the Notice of Allowance. The Notice of Abandonment further states that the issue and publication fees have not been received at the USPTO.

2. A copy of the previously transmitted issue fee transmittal and facsimile cover sheet (total 3 pages) are attached herewith. The issue fee transmittal and facsimile cover sheet were previously transmitted on July 16, 2004 (before the August 4, 2004 deadline).

A certificate of transmission that is properly signed and dated is included in the issue fee transmittal, pursuant to 37 C.F.R. §§ 1.8(a) and 1.6(d). The certificate of transmission is signed by "Janet Hollrah," the person having reasonable basis to expect that the issue fee transmittal would be transmitted on the date indicated, and is dated "July 16, 2004," the date of the transmission.

3. A Statement by Janet Hollrah Attesting to the Previous Timely Transmission is attached herewith (total 3 pages). The Statement by Janet Hollrah includes a copy of the sending facsimile machine's report confirming transmission on July 16, 2004.

4. No petition fee is required for this petition pursuant to MPEP § 711.03(c).

However, in the unlikely event that a petition fee is required, Applicants authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 249212014600.

In closing, Applicants respectfully request the issue fee transmittal previously transmitted on July 16, 2004 to be considered timely submitted. Applicants also respectfully request that the issue and publication fees authorized in the issue fee transmittal be considered timely submitted. Accordingly, the Notice of Abandonment is requested to be withdrawn and the present application granted as a patent.

Dated: October 7, 2004

Respectfully submitted,

By

Katherine D. Lee
Registration No.: 44,865
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
(415) 268-7000
Attorneys for Applicant

OIPE JC19 OCT 07 2004 PATENT & TRADEMARK OFFICE

PTO/SB/21 (08-03)
Approved for use through 07/31/2006. 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)

Application Number	09/953,060
Filing Date	September 14, 2001
First Named Inventor	Justin J. KOLLER
Art Unit	2651
Examiner Name	A. Faber
Total Number of Pages in This Submission: 10	Attorney Docket Number: 249212014600

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
- [X] Petition (3 pages)
- [ ] 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
- [X] Other Enclosure(s) (please identify below):
  1. Copy of filed Issue Fee Transmittal of July 16, 2004 (3 pages)
  2. Statement by Janet Hollrah Attesting to the Previous Timely Transmission (2 pages)
  3. Copy of Sender's Facsimile Confirmation Transmission Report (1 page)
  4. Return Receipt Postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	MORRISON & FOERSTER LLP (Customer No. 20872) Katherine D. Lee - 44,865
Signature	Katherine Lee
Date	October 7, 2004

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV381800364US, in an envelope addressed to: Mail Stop Issue Fee, Commissioner for Patents, Alexandria, VA 22313-1450, on the date shown below.

Dated: October 7, 2004 Signature: Janet Hollrah (Janet Hollrah)

Docket file

MORRISON & FOERSTER LLP

Attorneys at Law
425 Market Street
San Francisco, California 94105-2482
Telephone: (415) 268-7000
Facsimile: (415) 268-7522

To:

NAME:	FACSIMILE:	TELEPHONE:
M/S Issue Fee **U.S. Patent and Trademark Office**	**(703) 746-4000**	

FROM: Katherine D. Lee (Reg. No. 44,865) **DATE:** July 16, 2004

Number of pages with cover page: 3	

Preparer of this slip has confirmed that facsimile number given is correct: 2451/jxh3

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This facsimile contains confidential information which may also be privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute it. If you have received it in error, please advise Morrison & Foerster LLP immediately by telephone or facsimile and return it promptly by mail.

Contents of this Transmission:

Atty Docket No. 249212014600:

Inventor: Justin J. KOLLER et al.

Application No.: 09/953,060 Filing Date: September 14, 2001
Group Art Unit.: 2651 Examiner: A. Faber

Title: PROGRAMMABLE WRITE EQUALIZATION CIRCUIT

Documents Filed:

PTOL-85 w/duplicate copy for fee processing (2 pages)
Facsimile Return Receipt Cover Page

Sender's Initials: KDL3/jxh3 Date July 16, 2004

FIXED FEE ENTERED
By cjr
Date 7-16-04

DOCKETED cjr

sf-1743740

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Dated: October 7, 2004 Signature: (Janet Hollrah)

Docket No.: 249212014600
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Justin J. KOLLER et al.

Application No.: 09/953,060 Group Art Unit: 2651

Filed: September 14, 2001 Examiner: A. Faber

For: PROGRAMMABLE WRITE EQUALIZATION CIRCUIT

STATEMENT BY JANET HOLLRAH ATTESTING TO THE PREVIOUS TIMELY TRANSMISSION UNDER 37 C.F.R. § 1.8(b)(3)

1. I, Janet Hollrah, am a secretary at Morrison & Foerster LLP located at 425 Market Street, San Francisco, California 94105.

2. I have personal knowledge of the previous timely transmission of the issue fee transmittal and facsimile cover sheet (total 3 pages) for the above-identified application on July 16, 2004.

3. On July 16, 2004, I attest that I signed and dated the certificate of transmission included on the issue fee transmittal.

4. On July 16, 2004, I attest that I personally operated the facsimile machine and sent the issue fee transmittal and facsimile cover sheet (total 3 pages) to the U.S. Patent and Trademark Office ("USPTO"), or had directly supervised the operation of the facsimile machine for transmission to the USPTO.

5. I had reasonable basis to expect that the issue fee transmittal and facsimile cover sheet (total 3 pages) would be and was transmitted on July 16, 2004. The sending facsimile machine provided a report confirming transmission of 3 pages on July 16, 2004 at 2:16 PM. A copy of the sending facsimile machine's report confirming transmission is attached herewith (1 page).

October 7, 2004 Janet Hollrah

Date Janet Hollrah

OIPE JC16
OCT 07 2004
PATENT & TRADEMARK OFFICE

* * * TRANSMISSION RESULT REPORT (JUL. 16. 2004 2:16PM) * * *

TTI MOFO 28TH FL

DATE	TIME	ADDRESS	MODE	TIME	PAGE	RESULT	PERSONAL NAME	FILE
JUL. 16.	2:14PM	USPTO	G3ES	1'27"	P. 3	OK		054

:BATCH
M :MEMORY
S :STANDARD

C :CONFIDENTIAL
L :SEND LATER
D :DETAIL

$:TRANSFER
@ :FORWARDING
F :FINE

P :POLLING
E :ECM

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 7

GlaxoSmithKline
Corporate Intellectual Property – UW2220
PO Box 1539
King of Prussia, PA 19406-0939

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SEP 22 2003

OFFICE OF PETITIONS

In re Application of :
Black et al. :
Application No. 09/953,079 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. P50475-1-D1 :

This is a decision on the petition under 37 CFR 1.137(b), filed July 7, 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 Notice to File Missing Parts (Notice) mailed October 18, 2001, which set a shortened statutory period for reply of Two Months (2). No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on December 19, 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
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
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Paper No. 5

J.D. HARRIMAN II
COUDERT BROTHERS
23RD FLOOR
333 SOUTH HOPE STREET
LOS ANGELES, CA 90071

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APR 2 9 2002

OFFICE OF PETITIONS

In re Application of	:	
Dwight Marcus	:	DECISION DISMISSING
Application No. 09/953,086	:	PETITION
Filed: September 11, 2001	:	
Attorney Docket No. 0008016-0007	:	

This is a decision on the paper styled "PETITION TO CORRECT FILING DATE OF PATENT APPLICATION" filed February 15, 2002, which is properly treated as a petition under 37 CFR 1.10(d), requesting that the above-identified application be accorded a filing date of September 10, 2001, rather than the presently accorded filing date of September 11, 2001.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited with the U.S. Postal Service (USPS) as Express Mail service on September 10, 2001, pursuant to the requirements of 37 CFR 1.10.

Paragraph (d) of 37 CFR 1.10 states that:

> Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:
>
> (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
>
> (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
>
> (3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in

> "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in 'Express Mail Post Office to Addressee' service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS." Evidence from the USPS may be the Express Mail Corporate Account Mailing Statement. Evidence that came into being within one day after the deposit of the correspondence as Express Mail may be in the form of a log book which contains information such as the Express Mail number; identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log.

The present petition is accompanied by a Work order form printout provided by Time Machine Attorney Service, a courier service for mail delivery, and a copy of a letter from Marc Tamase, a Customer Service Supervisor with the Alameda Station Post Office.

The printout from Time Machine Attorney Service indicates that an Express Mail package (with no particular Express Mail Receipt number identified) was dropped at 18:48 on September 10, 2001. It is noted that a handwritten notation was included on the receipt which read "delivered to Post Office." However, the letter from the USPS Official does not corroborate that the Express Mail package in question was delivered prior to the last schedule pick-up. In fact, the letter states that "[a]ccording to postal records the Express Mail Certificate No. EL 782 719 104 US was processed at Worldway 900800 at 12:30am on September 11, 2001, which means the Express Mail was not scanned at Alameda Station 90012 on September 10, 2001."

In view of the above, the petition fails to include "a showing which establishes, to the satisfaction of the Commissioner, <u>that the</u> 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" as required by 37 CFR 1.10(d). Accordingly, the petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)) and should be addressed as follows:

By mail: U.S. Patent and Trademark Office
Box DAC, P.O. Box 2327
Arlington, VA 22202

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

The application is being retained in the Office of Petitions for two months pending a response to this decision. Failure to respond will result in the return of this application to the Initial Patent Examination Division for further processing with the presently accorded filing date of September 11, 2001.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

DEC 02 2004

Paper No. 11

Walter A. Hackler
2372 S.E. Bristol, Suite B
Newport Beach, CA 92660-0755

In re Application of	:	DECISION ON PETITION
Arlene E. Gwon et al	:	TO WITHDRAW
Serial No. : 09/953,121	:	HOLDING OF
Filed : September 12, 2001	:	ABANDONMENT
For : Method of Laser Photoablation of Lenticular Tissue For the Correction of Vision Problems	:	

This is a decision on petitioner's request filed October 12, 2004, to review the holding of abandonment mailed October 4, 2004, for failure to file an appeal brief or other appropriate response in view of the Notice of Appeal filed January 30, 2004. There is no fee required for this petition.

In support of the request, petitioner has submitted a copy of an appeal brief and a copy of a PTO stamped receipt dated March 26, 2004 as evidence of the timely filing of a response.

In view of the above, the Notice of Abandonment mailed October 4, 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 brief filed March 26, 2004.

Summary: Holding of Abandonment Withdrawn.

John E. Kittle, Director
Groups 3730 and 3760
Phone: (571) 272-2975

ak/11/24/04

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JJGJR.: 02-06

Paper No: __

ROBERT L. RISPOLI
PRECISION COMBUSTION INC.
410 SUCKETT POINT ROAD
NORTH HAVEN CT 06473

COPY MAILED

FEB 0 2 2006

OFFICE OF PETITIONS

In re Application of
Smith, et al.
Application No. 09/953,137
Filed: 15 September, 2001
Attorney Docket No. 5814-23

ON PETITION

This is a decision on the petition filed as a request for reconsideration on 20 December 2005, to revive the above-identified application under 37 C.F.R. §1.137(a)

For the reasons set forth below, the petition under 37 C.F.R.§1.137(a) is **DISMISSED**.

NOTES:

(1) Any petition (and fee) for reconsideration of this decision under 37 C.F.R. §1.137(a) (as to unavoidable delay) or an alternative request for relief under 37 C.F.R. §1.137(b)[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

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:

- following a non-final Office action mailed on 3 November, 2004, and an amendment with request and fee for extension of time filed on 3 May, 2005, Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 3 August, 2005, with a reply due (absent a request and fee for extension of time) on or before Tuesday, 6 September, 2005, Monday having been a holiday;

- as a result, the application was deemed abandoned after midnight 3 September, 2005;

- it appears that no Notice of Abandonment was mailed before the original petition was filed;

- on 20 December, 2005, Petitioner filed the instant petition with insufficient fee, an amendment as a reply, and averred that Petitioner misunderstood as to which line to direct the FAX filing of his amendment in May 2005–however, abandonment occurred not due to the destination of Petitioner's FAX but rather Petitioner's failure to be responsive to the 3 August, 2005, Office action.

Thus, not only does Petitioner fail to satisfy the fee requirement–having paid but $110.00 of the $500.00 fee due–he also fails to satisfy the showing requirement under the regulation.

Petitioner is reminded to consult the Office website (www.uspto.gov) as to the current fee schedule before filing.

Petitioner is reminded to consult the MPEP Chapter 700, specifically MPEP §711.03(c) for a discussion of the requirements as to petitions to revive.

Further, it is evident from the instant filing that Petitioner is unlikely to satisfy the showing

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(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.)

requirement of 37 C.F.R. §1.137(a), and Petitioner's only relief likely is a petition 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).[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

---

[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.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

Petitioner has failed to: make a showing of unavoidable delay.

Accordingly, in view of the record, the petition as considered under 37 C.F.R. §1.137(a) hereby is **dismissed** for failing to satisfy the "fee" and the "showing" requirements.

Petitioner is reminded that he must pay the balance due on the instant petition fee and any alternative petition fee as well before relief can be granted.

ALTERNATIVE VENUE

If Petitioner is 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.

CONCLUSION

The instant petition under 37 C.F.R. §1.137(a) is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:[8]

By mail: Commissioner for Patents[9]
P.O. Box 1450
Alexandria, VA 22313-1450

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[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared and/or deposited for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely prepared and/or deposited for shipment.

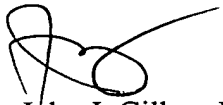
[8] On July 15, 2005, the Central Facsimile (FAX) Number will change from (703) 872-9306 to (571) 273-8300. Faxes sent to the old number will be routed to the new number until September 15, 2005. After September 15, 2005, the old number will no longer be in service and (571) 273-8300 will be the only facsimile number recognized for centralized delivery. (For further information. see: http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/cfax062005.pdf .)

[9] To determine the appropriate addresses for other subject-specific correspondence, refer to the USPTO Web site at www.uspto.gov.

By FAX: IFW Formal Filings
(571) 273-8300
ATTN.: Office of Petitions

By hand: Mail Stop: Petition
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3214.



John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Encl. Notice of Non-Compliant Amendment–3 August, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HOWREY LLP-EU
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR., SUITE 200
FALLS CHURCH VA 22042

COPY MAILED

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OFFICE OF PETITIONS

In re Application of
Karel Van Den Berg, et al.
Application No. 09/953,147
Filed: September 17, 2001
Attorney Docket No. 04132.0125.000000

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**.

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.

Receipt is acknowledged of the Power Of Attorney To Prosecute Applications Before The USPTO and Statement Under 37 CFR 3.73(b) filed with the instant notice on October 24, 2008. The office records will be corrected accordingly.

Petitioner authorized payment of $130.00 petition fee; however, there is no petition fee when notifying the office the change of entity. Therefore, the $130.00 is being credited to Petitioner's deposit account.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3213.

Cheryl Gibson-Baylor
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/953,147	09/17/2001	Alexander van der Lely	04132.0125.000000

CONFIRMATION NO. 5666

POA ACCEPTANCE LETTER

32894
HOWREY LLP-EU
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR., SUITE 200
FALLS CHURCH, VA 22042

OC000000033513594

Date Mailed: 12/09/2008

NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 10/24/2008.

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.

/cpgibson baylor/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Penrose Lucas Albright, Esq.
MASON, MASON & ALBRIGHT
P.O. Box 2246
Arlington VA 22202-0246

COPY MAILED

MAR 20 2007

OFFICE OF PETITIONS

In re Application of :
VAN DER LELY et al :
Application No.: 09/953,181 : DECISION ON PETITION
Filing Date: September 17, 2001 : UNDER 37 CFR 1.137(b)
Attorney Docket No.: 8553/237 :

This is a decision on the petition under 37 CFR 1.137(b), filed December 22, 2006, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed September 24, 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, by operation of law, the above-identified application became abandoned on December 27, 2004 (December 24 being a Federal holiday, December 25 being a Saturday).

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 and amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action mailed September 24, 2004 is accepted as having been unintentionally delayed.

This application is being referred to Technology Center AU 3643 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

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C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

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MAY 1 2 2008

OFFICE OF PETITIONS

In re Application of :
Alexander VAN DER LELY et al. :
Application No. 09/953,181 : DECISION ON PETITION
Filed: September 17, 2001 :
Attorney Docket No. **04132.0106.00US00** :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 28, 2008, 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 non-final Office action, mailed March 29, 2007, 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 30, 2007.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee of 1,540; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of March 29, 2007 is accepted as having been unintentionally delayed.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1,050.00 extension of time fee submitted with the petition on February 28, 2008 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at (571) 272-4231.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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HOWREY LLP – EAST
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR. SUITE 200
FALLS CHURCH VA 22042-2924

MAILED

SEP 29 2009

OFFICE OF PETITIONS

In re application of :
Alexander Van Der Lely et al :
Application No. 09/953,181 :
Filed: September 17, 2001 :
Attorney Docket No. 04132.0106.00US00 :

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 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.

The petition fee submitted on December 11, 2008 is being credited to deposit account no. 08-3038, since no petition fee is required for the above request.

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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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper 4

NIXON PEABODY, LLP
SUITE 800
8180 GREENSBORO DRIVE
MCLEAN, VA 22102

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JAN 04 2002

OFFICE OF PETITIONS

In re application of
Nagel, et al.
Application No. 09/953,211
Filed: 17 September, 2001
Attorney Docket No.: 740301-416

ON PETITION

This is a decision on the petition filed on 17 October and supplemented on 28 December, 2001, styled as "Request for Correction or Withdrawal of the Notice of Incomplete Application," and properly considered under the provisions of 37 C.F.R. §1.53 (e)[1] to accord a filing date of 17 September, 2001, to application as filed absent page 29 of the specification (the first page of the claims).

The petition is **GRANTED**.[2]

The record indicates that:

- the instant application was deposited on 17 September, 2001, and page 29 of the specification (the first page of the claims) was not included with other items of the application;
- a Notice of Incomplete Nonprovisional Application (no filing date granted) was mailed on 5 October, 2001, stating that:

  --the specification did not include at least one claim and that page 29 of the specification/claim was omitted and not filed contemporaneously with the application, and

  --the filing date would be the date of receipt of the omitted specification (claim); and

---

[1] The regulation at 37 C.F.R. §1.53(e) provide:

§ 1.53 Application number, filing date, and completion of application.

* * *

(e) *Failure to meet filing date requirements.*

(1) If an application deposited under paragraph (b), (c), or (d) of this section does not meet the requirements of such paragraph to be entitled to a filing date, applicant will be so notified, if a correspondence address has been provided, and given a time period within which to correct the filing error.

(2) Any request for review of a notification pursuant to paragraph (e)(1) of this section, or 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.

(3) If an applicant is notified of a filing error pursuant to paragraph (e)(1) of this section, but fails to correct the filing error within the given time period or otherwise timely (§ 1.181(f)) take action pursuant to this paragraph, proceedings in the application will be considered terminated. Where proceedings in an application are terminated pursuant to this paragraph, the application may be disposed of, and any filing fees, less the handling fee set forth in § 1.21(n), will be refunded.

* * *

[2] No fee was charged upon filing; therefore no refund/credit is necessary/proper.

- the Notice also informed the Applicant that a signed oath or declaration must be filed, along with proper-sized pages for the specification (description, claims, abstract) and the drawings;
- the instant petition was filed in response on 17 October, 2001, including a copy of the application as filed (absent page 29 (first page of claims)) but on proper-sized paper, along with drawings on proper-sized paper--therein Petitioner states that a review of the file indicates that pages 30-32 of the application as filed contained claims 4-8.[3]

A review of the record indicates that the application as deposited on 17 September, 2001, did contain pages 30-32, which pages contain claims 4-8. *It is noted that the preliminary amendment canceling claims 2-8 filed on 17 September, 2001, was not clerically entered prior to the instant petition. Therefore, at least claims 4-8 were present on 17 September, 2001.*

Accordingly, the petition is **granted**.

The Notice of Incomplete Nonprovisional Application mailed on 5 October, 2001, hereby is withdrawn.

To avoid delays in the examination of the application, an amendment renumbering the pages in consecutive order and canceling the incomplete sentences on page 30 should be filed prior to the first Office action.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 17 September, 2001, using the 28 pages of specification, three (3) pages of claims (pages 30-32), and the nine (9) pages drawings filed on 17 September, 2001.

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[3] Petitioner submits in supplement of the petition: a copy of the date-stamped (17 September, 2001) receipt card (containing the Office bar code and serial number), stating, *inter alia*, "Specification, Claims and Abstract (33 pages)[.]" Nonetheless, Petitioner does not dispute the absence of page 29. And a return postcard receipt serves as *prima facie* evidence that the identified papers were or were not received by the Office.

MPEP §503 provides in pertinent part as follows:

> [T]he postcard receipt will not serve as *prima facie* evidence of receipt of papers which are not adequately itemized...Instead, each separate component, e.g., the number of pages of specification, number of claims (nonprovisional applications), number of sheets of drawings, cover sheet (provisional applications), etc. should be itemized on the postcard receipt...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.

MPEP § 513 provides in pertinent part as follows:

* * *

> Where there is a dispute as to the contents of correspondence submitted to the Office (e.g., an applicant asserts that three sheets of drawings were submitted under 37 C.F.R. §1.10 with an application, but the Office records indicate receipt of only two sheets of drawings with the application), an applicant may not rely upon the provisions of 37 C.F.R. §1.10(e) to establish what document(s) and/or fee(s) were filed in the Office with such correspondence. Rather, where the records of the Office (e.g., the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in absence of convincing evidence (e.g., a postcard receipt under MPEP §503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.

Telephone inquiries concerning this matter may be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703)305-9199.

John J. Gillon, Jr.
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

PTO/SB/66 (03-09)
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PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6648348	2003-11-18	09953246	2001-09-13	

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY

☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity			Small Entity		
	Fee	Code		Fee	Code
○	3 ½ year	(1551)	◉	3 ½ year	(2551)
○	7 ½ year	(1552)	○	7 ½ year	(2552)
○	11 ½ year	(1553)	○	11 ½ year	(2553)

SURCHARGE

The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition.

STATEMENT

THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Peter M Midgley/	Date (YYYY-MM-DD)	2009-11-18
Name	Peter M. Midgley	Registration Number	44239

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these records.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6648348
Issue Date: November 18,2003
Application No. 09953246
Filed: September 13,2001
Attorney Docket No. 1687

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed November 18,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of November 18,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

Ex. P. Chung

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 6/12/07

TO SPE OF : ART UNIT 2117

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/953,254 Patent No.: 6877125

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Lamonte M. Newsome
Certificates of Correction Branch
703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

JACQUES LOUIS-JACQUES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

2117
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 6

SHERMAN & SHERMAN, A.P.C.
2029 CENTURY PARK EAST
SEVENTEENTH FLOOR
LOS ANGELES CA 90067

COPY MAILED

JUL 2 5 2002

OFFICE OF PETITIONS

In re Application of:
Yiming Zhou, Isaac (Ariel) Bentolila, Kulbhushan Kaushal, Labeeb Ismail and Richard Humpleman
Application No. 09/953,327
Filed: Spetember 14, 2001
Title of Invention: METHOD AND SYSTEM FOR DELIVERY OF TARGETED PROGRAMMING

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to a Petition Under 37 C.F.R. 1.47(a), filed April 23, 2002, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor.

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.

Petitioner has shown that the non-signing inventor, Isaac (Ariel) Bentolila, refuses to sign the declaration after being presented with the above-identified application and declaration.

As provided in Rule 1.47(a), 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.

The application file is being forwarded to the Office of Initial Patent Examination for continued processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

MAILED

DEC 24 2008

TECHNOLOGY CENTER 2100

In re Application of: MOTOYAMA, et al.
Application No. 09/953,357
Attorney Docket: 205828US-2
Filed: Sep 17, 2001
For: SYSTEM, METHOD, AND COMPUTER PROGRAM PRODUCT FOR COLLECTING AND SENDING VARIOUS TYPES OF INFORMATION TO A MONITOR USING E-MAIL

DECISION ON PETITION TO CONSIDER IDS

This paper provides the decision on the petition, filed Sep 17, 2008, under 37 CFR § 1.181 to invoke Supervisory Authority requiring the Examiner to consider Information Disclosure Statements (IDS) filed on August 15, 2002, April 7, 2003, and February 15, 2008.

The applicant asserts that upon reviewing the Image File Wrapper on Private PAIR, applicants' representative discovered that there is no record of the IDS (PTO-1449) filed on April 7, 2003 but that the IDS/Lists of Related cases filed on August 15, 2002 and February 15, 2008 can be found in PAIR.

A review of the file prosecution history indicates:

The IDS/Lists of Related cases filed on August 15, 2002 and February 15, 2008 indeed can be found in PAIR.

The original Information Disclosure Statement (IDS) filed April 7, 2003 was never made of record in the file and there is no record of the IDS being received by the U.S. Patent and Trademark Office (USPTO). However, a copy of the IDS was received on Sep 17, 20028 bearing a Certificate of Mailing receipt of April 07, 2003. The registered practitioner, Surinder Sachar, has attested on a personal knowledge basis that the original response was submitted on April 7, 2003.

37 C.F.R. 1.8(b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed

from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed or decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), 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 that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission. 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. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

In view of the above, the request to consider Information Disclosure Statements (IDS) filed on August 15, 2002, April 7, 2003, and February 15, 2008 is hereby accepted.

The petition is **GRANTED**.

The application file is being forwarded to the Examiner to consider the IDSs filed August 15, 2001, April 7, 2003, and February 15, 2008.

Any inquiry concerning this decision should be directed to Kim Huynh whose telephone number is (571) 272-4147.

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400,
Network, Multiplexing, Cable and Security

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.
09/953,357	09/17/2001	Tetsuro Motoyama	205828US-2	5134

22850 7590 12/26/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
STRANGE, AARON N	

ART UNIT	PAPER NUMBER
2453	

NOTIFICATION DATE	DELIVERY MODE
12/26/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
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Alexandria, Virginia 22313-1450
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/953,357	09/17/2001	Tetsuro Motoyama	205828US-2	5134

22850 7590 01/08/2009

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
STRANGE, AARON N	

ART UNIT	PAPER NUMBER
2153	

NOTIFICATION DATE	DELIVERY MODE
01/08/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

UNITED STATES DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
09953357	9/17/01	MOTOYAMA ET AL.	205828US-2

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER
KIM HUYNH

ART UNIT	PAPER
2100	20090105A

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Attached is a petition decision in response to the petition filed 09/17/08. This petition is a replacement of the petition decision (without a signature) mailed 12/26/08.

Kim Huynh
TC 2400 QAS

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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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of: MOTOYAMA, et al.
Application No. 09/953,357
Attorney Docket: 205828US-2
Filed: Sep 17, 2001
For: SYSTEM, METHOD, AND COMPUTER PROGRAM PRODUCT FOR COLLECTING AND SENDING VARIOUS TYPES OF INFORMATION TO A MONITOR USING E-MAIL

DECISION ON PETITION TO CONSIDER IDS

This paper provides the decision on the petition, filed Sep 17, 2008, under 37 CFR § 1.181 to invoke Supervisory Authority requiring the Examiner to consider Information Disclosure Statements (IDS) filed on August 15, 2002, April 7, 2003, and February 15, 2008.

The applicant asserts that upon reviewing the Image File Wrapper on Private PAIR, applicants' representative discovered that there is no record of the IDS (PTO-1449) filed on April 7, 2003 but that the IDS/Lists of Related cases filed on August 15, 2002 and February 15, 2008 can be found in PAIR.

A review of the file prosecution history indicates:

The IDS/Lists of Related cases filed on August 15, 2002 and February 15, 2008 indeed can be found in PAIR.

The original Information Disclosure Statement (IDS) filed April 7, 2003 was never made of record in the file and there is no record of the IDS being received by the U.S. Patent and Trademark Office (USPTO). However, a copy of the IDS was received on Sep 17, 20028 bearing a Certificate of Mailing receipt of April 07, 2003. The registered practitioner, Surinder Sachar, has attested on a personal knowledge basis that the original response was submitted on April 7, 2003.

37 C.F.R. 1.8(b) states:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed

from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed or decided with prejudice, or the prosecution of a reexamination proceeding is terminated pursuant to § 1.550(d) or § 1.957(b) or limited pursuant to § 1.957(c), or a requester paper is refused consideration pursuant to § 1.957(a), 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 that attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing, transmission or submission. 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. If the correspondence was transmitted via the Office electronic filing system, a copy of an acknowledgment receipt generated by the Office electronic filing system confirming submission may be used to support this statement.

In view of the above, the request to consider Information Disclosure Statements (IDS) filed on August 15, 2002, April 7, 2003, and February 15, 2008 is hereby accepted.

The petition is **GRANTED**.

The application file is being forwarded to the Examiner to consider the IDSs filed August 15, 2001, April 7, 2003, and February 15, 2008.

Any inquiry concerning this decision should be directed to Kim Huynh whose telephone number is (571) 272-4147.

/Kim Huynh/

Kim Huynh,
Quality Assurance Specialist
Technology Center 2400,
Network, Multiplexing, Cable and Security

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TECHNOLOGY CENTER 2100

James J. Kulbaski
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA VA 22314

In re Application of: MOTOYAMA, T., et. al.
Application No. **09/953,359**
Filed: September 17, 2001
Docket No. 205847US-2
Title: SYSTEM, METHOD, AND COMPUTER PROGRAM PRODUCT FOR SENDING REMOTE DEVICE CONFIGURATION INFORMATION TO A MONITOR USING E-MAIL

DECISION ON PETITION UNDER 37 C.F.R. § 1.181

This is a decision on the petition filed on March 05, 2009 under 37 CFR § 1.181(a)(3) requesting that the Examiner consider all references listed on Information Disclosure Statement (IDS) filed on April 03, 2006.

The petition is **DISMISSED AS MOOT**.

A review of the file of instant application indicates that on April 08, 2009, the Office considered each of the references listed on the IDS above mentioned and that applicant was informed of such via a PTO-90C communication. Since each of those references listed on the above mentioned IDS has been already considered, this petition is rendered moot.

Accordingly, the petition is **DISMISSED AS MOOT**.

Any inquiry regarding this decision should be directed the undersigned whose telephone number is (571) 272-3902. If attempts to reach the undersigned by telephone are unsuccessful, Kim Huynh, Quality Assurance Specialist, can be reached at (571) 272-4147.

/bp/

/Beatriz Prieto/

Beatriz Prieto, Quality Assurance Specialist
Technology Center 2400
Network, Multiplexing, Cable and Security

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Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/953,359	09/17/2001	Tetsuro Motoyama	205847US-2	5140

22850 7590 05/11/2009

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.
1940 DUKE STREET
ALEXANDRIA, VA 22314

EXAMINER	
PHILLIPS, HASSAN A	

ART UNIT	PAPER NUMBER
2451	

NOTIFICATION DATE	DELIVERY MODE
05/11/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

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BROMBERG & SUNSTEIN LLP
125 SUMMER STREET
BOSTON, MA 02110-1618

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OFFICE OF PETITIONS

In re Application of :
Philipp Lang et al :
Application No. 09/953,373 : DECISION ON PETITION
Filed: September 14, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 3104/001 :

This is a decision on the petition, filed April 17, 2006, which is being treated under the provisions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120, 365(c) and 119(e) for the benefit of priority to the prior-filed nonprovisional, PCT and provisional applications set forth in the concurrently filed amendment and Application Data Sheet (ADS); namely, Application Nos. 09/882,363; PCT/US99/30265; and 60/112,989. Provisional Application Nos. 60/232,637 and 60/232,639 were claimed at the time of filing the application.

The petition is **GRANTED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

(1) 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 where there is a question whether the delay was unintentional.

Additionally, the instant nonprovisional application must be pending at the time of filing of the reference to the prior-filed provisional application as required by 37 CFR 1.78(a)(5)(ii). Further, the nonprovisional or PCT application claiming the benefit of the prior-filed provisional application must have been filed within twelve months of the filing date of the prior-filed provisional application.

All of the above requirements having been satisfied, the late claim for benefit of priority to the prior-filed applications under 35 U.S.C. §§ 120, 365(c) and 119(e) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that this application is entitled to the benefit of the filing date of the prior-filed applications. In order for this application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §§120 and 365(c) and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the benefit claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter 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 application is being referred to Technology Center Art Unit 3768 for consideration by the examiner of the claim for benefit of priority under 35 U.S.C. § §120, 365(c) and 119(e) to the prior-filed applications.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT : Corrected Filing Receipt

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P.O. Box 1450
Alexandria, VA 22313-1450
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125 SUMMER STREET
BOSTON MA 02110-1618

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OFFICE OF PETITIONS

In re Application of :
Philipp Lang et al :
Application No. 09/953,373 : ON PETITION
Filed: September 14, 2001 :
Attorney Docket No. 3104/001 :

This is a decision on the petition, filed April 14, 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 January 6, 2006 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The application will remain in the Office of petitions to consider the petition under 37 CFR 1.78(a) filed April 17, 2006.

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 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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Takashi Hashimoto
Intellectual Property Law Group LLP
12th Floor
12 S. 1st Street
San Jose, CA 95113

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AUG 25 2005

OFFICE OF PETITIONS

In re Application of :
Teruaki Matsumoto, et al. :
Application No. 09/953,380 : DECISION ON PETITION
Filed: September 13, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. SOHMEI.BABCOCK-HATACHI.PT :

This is a decision on the petition under 37 CFR 1.78(a)(3), filed November 10, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/JP01/00135, filed January 12, 2001, set forth in the amendment submitted 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.

All the above requirements having been satisfied, the late claim for priority under 35 U.S.C. §§ 120 and 365(c) is accepted as being unintentionally delayed.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the application is entitled to the benefit of the prior-filed application. In order for the application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §§ 120 and 365(c) and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed application, accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Marianne Jenkins at (571) 272-3223. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being forwarded to the examiner of Technology Center Art Unit 1746 for appropriate action on the amendment filed November 10, 2004, including consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to the above-noted, prior-filed PCT application.

Frances Hicks

Frances M. Hicks
Lead Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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Commissioner for Patents
United States Patent and Trademark Office
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HOWREY LLP
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH VA 22042-2924

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In re Application of
van der Lely, et al.
Application No. 09/953,406
Filed: 17 September, 2001
Attorney Docket No. 04132.0105.00US00

: DECISION

This is a decision on the petition filed on 29 February, 2008, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The Office regrets the delay in addressing this matter, however, the instant petition was presented to the attorneys in the Office of Petitions only at this writing.

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.

As to the Allegations
of Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

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).

It appears that Petitioner has not satisfied the requirements of the regulation, to wit: The instant petition lacks valid statement of unintentional delay.

Petitioner as one registered to practice before the Office is well aware that a statement of unintentional delay cannot be made by one who was not responsible for the application at the time it went abandoned—which is what Petitioner has attempted to do. The Office appreciates that former Counsel is deceased, and in that case the petition to revive properly is signed by the inventor/assignee (with an assignee's certificate under 37 C.F.R. §3.73(b) (See also: MPEP §711.03(c).)

BACKGROUND

The record reflects that:

Petitioner failed to reply to a final Office action mailed on 17 December, 2004, with reply due absent an extension of time on or before 17 March, 2005.

The application went abandoned by operation of law after midnight 17 March, 2005.

The Office mailed the Notice of Abandonment on 8 September, 2005.

On 29 February, 2008, Petitioner filed the instant petition (with fee) alleging unintentional delay under 37 C.F.R. §1.137(b), included therewith, *inter alia*, a reply in the form of a request for continued examination with fee and a submission under 37 C.F.R. §1.114 in the form of an amendment, and made the statement of unintentional delay—which latter item, as discussed above, is not properly made by a party in control of the application at the time the application went abandoned; thus, Petitioner is not in a position to properly make the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application. Thus, now if one wishes to know the progress in and/or status of an application or the accuracy of the data therein, one need only look at the file online.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice *and* all others who make representations before the Office must inquire into the underlying facts

of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a Petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application.[2],[3]

CONCLUSION

The instant petition under 37 C.F.R. §1.137(b) is **dismissed**.

Further correspondence with respect to this matter should be addressed as follows:

By Mail:
Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By hand:
U. S. Patent and Trademark Office
Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300.**

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office). See specifically, the regulations at 37 C.F.R. §10.18.

[2] See: Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. at 53158-59 (October 10, 1997), 1203 Off. Gaz. Pat. Office at 86-87 (October 21, 1997).

[3] The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition. (Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.) Delays in responding properly raise the question whether delays are unavoidable. Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) And the Petitioner must be diligent in attending to the matter. Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care. (By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.))

While telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214, it is noted that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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OFFICE OF PETITIONS

In re Application of :
van der Lely, et al. :
Application No. 09/953,406 : DECISION
Filed: 17 September, 2001 :
Attorney Docket No. 04132.0105.00US00

This is a decision on the petition filed on 20 June, 2008, to revive an application under 37 C.F.R. §1.137(b) as having been abandoned due to unintentional delay.

The petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to Allegations of
Unintentional Delay

The requirements of a grantable petition pursuant to 37 C.F.R. §1.137(b) are the petition and fee therefor, a reply, a proper statement of unintentional delay under the regulation, and, where applicable, a terminal disclaimer and fee. (However, it does not appear that a terminal disclaimer and fee are due here.)

BACKGROUND

The record reflects that:

Petitioner failed to reply to a final Office action mailed on 17 December, 2004, with reply due absent an extension of time on or before 17 March, 2005.

The application went abandoned by operation of law after midnight 17 March, 2005.

The Office mailed the Notice of Abandonment on 8 September, 2005.

On 29 February, 2008, Petitioner filed a petition (with fee) alleging unintentional delay under 37 C.F.R. §1.137(b), included therewith, *inter alia*, a reply in the form of a request for continued examination with fee and a submission under 37 C.F.R. §1.114 in the form of an amendment,

and made the statement of unintentional delay—however, the statement was not properly made by a party in control of the application at the time the application went abandoned; thus, Petitioner was not in a position to properly make the statement of unintentional delay—and the petition was dismissed on 27 May, 2008.

The instant petition now completes the requirements of petition, fee, reply and statement/showing of unintentional delay with a statement of investigation by Petitioner Michael Bell (Reg. No. 39,604) and a statement by Dutch Patent Counsel F.J.A. deGroen setting forth the history that led to the delay, its nature, and making the express/regulatory statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that those registered to practice and all others who make representations before the Office are reminded to inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

STATUTES, REGULATIONS AND ANALYSIS

Congress has authorized the Commissioner to "revive an application if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable." 35 U.S.C. §133 (1994).[2] The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority.

Unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[3]

As to Allegations of Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

[2] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.

Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to the Technology Center/AU (TC/AU) 3643 for further processing in in due course.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the instant decision to ensure that the revival has been acknowledged by the TC/AU in response to this decision. It is noted that all inquiries with regard to that change in status need be directed to the TC/AU where that change of status must be effected—that does not occur in the Office of Petitions.

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[4]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney
Office of Petitions

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[4] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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OFFICE OF PETITIONS

In re Application of :
van der Lely, et al. :
Application No. 09/953,406 : DECISION
Filed: 17 September, 2001 :
Attorney Docket No. 04132.0105.00US00

This is a decision on the petition filed on 22 October, 2008, under 37 C.F.R. §1.27(g)(2) requesting that status as a Small Entity be removed.

Petitioner's submission is **accepted**.

In accordance with the request, status as a Small Entity will be removed, and Petitioner is required to pay fees at the schedule set forth for not-small entities.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that that those registered to practice and all others who make representations before the Office **must** inquire into the underlying facts of representations made to the Office and support averments with the appropriate documentation–since all owe to the Office the continuing duty to disclose.[1]

The instant application is released to the Technology Center/AU (TC/AU) 3643 for further processing in due course.

[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on Petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Telephone inquiries regarding this decision may be directed to the undersigned at (571) 272-3214—it is noted, however, that all practice before the Office is in writing (see: 37 C.F.R. §1.2[2]) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority for Petitioner's action(s).

/John J. Gillon, Jr./
John J. Gillon, Jr.
Senior Attorney

[2] The regulations at 37 C.F.R. §1.2 provide:
§1.2 Business to be transacted in writing.
All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

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Technology Center 2100

Paper No. 3

John W. Ryan
WILMER CUTLER & PICKERING
2445 M Street, N.W.
Washington, DC 20037

In re Application of:	)	
Michael J. Miller	)	
Application No. 09/953,408	)	**DECISION ON REQUEST FOR**
Filed: September 17, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: SYSTEM FOR AUTOMATED, MID-SESSION, USER-DIRECTED, DEVICE-TO-DEVICE SESSION TRANSFER SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed March 19, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed March 19, 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: Brad Aaron
AETHER SYSTEMS
11460 Cronridge Drive
Owings Mills, MD 21117