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Paper No. 10

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

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SEP 1 1 2002

OFFICE OF PETITIONS

In re Application of :
Ronald Vidal, Paul Alexander, :
Robert Kelly, David Bruton and :
Robert Todd :
Application No. 09/988,821 :
Filed: November 20, 2001 :
Title: CABLE INSTALLATION :

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

This is a decision on the "Petition under 37 C.F.R. § 1.47(a)," filed June 12, 2002.

The petition under §1.47(a) is **GRANTED**.

The above-identified application was filed on November 20, 2001, without an executed oath or declaration. Ronald Vidal, Paul Alexander, Robert Kelly, David Bruton and Robert Todd were named as joint inventors. Accordingly, on February 12, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, and a surcharge for late filing. This Notice set a period for reply of two months from the mailing date of the notice, with extensions of time obtainable under § 1.136(a).

On June 12, 2002, applicants responded *inter alia* with the instant petition, made timely by an accompanying petition (and fee) for extension of time for response within the second; three declarations executed in combination by joint inventors Vidal, Kelly and Bruton on behalf of themselves and on behalf of non-signing inventors Alexander and Todd; and payment of the surcharge for late filing of the declaration.

Rule 47 applicant maintains that status under 37 CFR 1.47(a) is proper because joint inventors Alexander and Todd are unavailable to join in the application for patent. 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.

Petitioner has shown that the non-signing inventors have refused to join in the filing of the above-identified application after having been presented with the application papers. By declaration of paralegal Kathy Manke, rule 47 applicants have shown that a copy of the application papers were presented to

each of the non-signing inventors and that each, by their conduct in not responding, have refused to join in the application. Documentary evidence in the form of copies of the letters transmitting the application papers to each inventor by United Parcel Service (UPS) delivery along with UPS delivery tracking confirmations, were made a part of the statement. The letters set forth deadlines for applicants to respond with executed declarations. These deadlines have passed without a response having been received by applicants.

The declarations filed June 12, 2002, and the petition have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

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

Nancy Johnson

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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ROBERT TODD
40 WORDSWORTH ROAD
HARPENDEN, HERTS
ENGLAND AL5 4AF

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SEP 1 1 2002
OFFICE OF PETITIONS

In re Application of Ronald Vidal, Paul Alexander, Robert Kelly, David Bruton and Robert Todd Application No. 09/988,821 Filed: November 20, 2001 Title: CABLE INSTALLATION	: : : : : : :	LETTER

Dear Mr. Todd:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

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

PAUL ALEXANDER
35 DELANCEY STREET
CAMDEN, LONDON
ENGLAND NW1 7RX

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SEP 1 1 2002

OFFICE OF PETITIONS

In re Application of Ronald Vidal, Paul Alexander, Robert Kelly, David Bruton and Robert Todd Application No. 09/988,821 Filed: November 20, 2001 Title: CABLE INSTALLATION	:	LETTER

Dear Mr. Alexander:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Nancy Johnson

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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

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WILLIAM WORZEL
214 WEST MAIN STREET
MILAN, MI 48160

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OFFICE OF PETITIONS

In re Application of :
Rassool, et al. :
Application No. 09/988,824 : LETTER
Filed: November 20, 2001 :
Attorney Docket No.: P 271178 :
For: MEDIA TRACKING SYSTEM AND :
METHOD :

Dear Sir:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost as per 37 C.F.R. § 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. § 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-0310. 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).

AMBrown

Alesia M. Brown
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

CC: PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

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OFFICE OF PETITIONS

PILLSBURY WINTHROP, LLP
P.O. BOX 10500
MCLEAN, VA 22102

In re Application of Rassool, et al. Application No. 09/988,824 Filed: November 20, 2001 Attorney Docket No.: P 271178 For: MEDIA TRACKING SYSTEM AND METHOD	DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This decision is in response to the petition under 37 CFR 1.47(a), filed March 28, 2002.

Petitioner has shown that inventor William P. Worzel has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the declaration of Nicholas L. Holowach sufficiently establishes that the inventor received the application papers and thereafter refused to execute the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the 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 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

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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

J1011 U.S. PTO
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11/19/01

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OFFICE OF PETITIONS
A/C PATENTS

In re Application of :
Strassmann, Liang, Topouzis :
Application No. 09/305,989 : DECISION ACCORDING STATUS
Filed: May 6, 1999 : UNDER 37 CFR 1.47(a)
For: Methods of Treating :
Diabetes

This is in response to the "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," filed January 11, 2001 (Certificate of Mailing date January 9, 2001).

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application. Specifically, the declaration by Ms. Zacharakis clearly establishes that the non-signing inventor, Mr. Strassman, received the application papers and refused to sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(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.

After the mailing of this decision, this will be forwarded to Group Art Unit 1648 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

Karin Tyson
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
For Patent Policy and Projects

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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

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OFFICE OF PETITIONS
A/C PATENTS

In re Application of	:
Strassmann, Liang, Topouzis	:
Application No. 09/305,989	: DECISION ACCORDING STATUS
Filed: May 6, 1999	: UNDER 37 CFR 1.47(a)
For: Methods of Treating	:
Diabetes	

This is in response to the "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," filed January 11, 2001 (Certificate of Mailing date January 9, 2001).

The petition is granted.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application. Specifically, the declaration by Ms. Zacharakis clearly establishes that the non-signing inventor, Mr. Strassman, received the application papers and refused to sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(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.

After the mailing of this decision, this will be forwarded to Group Art Unit 1648 for further processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703)306-3159.

Karin Tyson
Senior Legal Advisor
Office of Patent Legal Administration
Office of the Deputy Commissioner
For Patent Policy and Projects

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov
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Paper No. 14

RICHARD F. JAWORSKI
COOPER & DUNHAM LLP
1185 AVENUE OF THE AMERICAS
NEW YORK NY 10036

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OFFICE OF PETITIONS

In re Application of	:	
Sekiya et al.	:	LETTER GRANTING
Application No. 09/988,845	:	FILING DATE
Filed: 16 November, 2001	:	
Attorney Docket No. 2271/59695-C	:	

This is a response to the paper styled as a petition under 37 CFR 1.182, filed on 29 May, 2003, which is being treated as a petition under 37 CFR 1.181 to accord the above-identified application a filing date of 16 November, 2001, rather than the currently-accorded filing date of 19 November, 2001.

Petitioners state that the application was originally deposited with the USPS in Express Mail service on 16 November, 2001, but that the application package was returned as undeliverable by the USPS, and was re-deposited on 19 November, 2001. In support, on 8 July, 2002, petitioners supplied a copy of their Express Mail receipt, bearing a "date-in" of 16 November, 2001.

The USPTO is aware that the USPS suspended Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g. 20231) from 16 November, 2001, through 29 November, 2001. On 9 October, 2001, the USPTO published a notice in the Official Gazette providing guidance in the situation in which a post office refuses to accept the deposit of mail for delivery by Express Mail service.[1] The guidance set forth in that notice also applies if a post office refuses to accept the deposit of correspondence for delivery by Express Mail due to the suspension of the USPS's Express Mail service to Washington, D.C., ZIP Code 20231, as well as the situation in which correspondence is returned as undeliverable due to this suspension.

The guidance set forth in the above-mentioned Official Gazette notice is reproduced below:

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[1] See United States Postal Service Interruption and Emergency, 1251 Off. Gaz. Pat. Office 55 (October 9, 2001).

Where the USPS refuses to accept the deposit of mail for delivery by express mail.

In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 ("Express Mail Post Office to Addressee") and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.

Where mail is put into an Express Mail "Drop Box" and given an incorrect "date in".

In some cases a person may use an Express Mail "drop box" without realizing that the local post office is not accepting Express Mail. In that situation, the provisions of 37 CFR 1.10(d) may apply. Usually 37 CFR 1.10(d) is invoked where correspondence is placed in an Express Mail "drop box" prior to the last pick up that is scheduled for the drop box for that day, but the USPS enters an incorrect "date-in" on the Express Mail mailing label, usually the next day's date. To invoke 37 CFR 1.10(d), however, a 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 of the correspondence in the Express Mail drop box (e.g., a copy of a log book indicating that the correspondence was deposited on the date in question). See MPEP 513 and TMEP 702.02(e).

Alternative Procedure Invoking "Extraordinary Circumstances"

If a party can demonstrate that due to extraordinary circumstances the above procedures could not be followed, it will be necessary to file a petition under 37 C.F.R. 1.183 (patent matter) or 2.146(a)(5) and 2.148 (trademark matter) to waive the requirements of 37 C.F.R. 1.10 to permit the USPTO to accord the correspondence a filing date as of the date that Express Mail deposit was attempted. Such a petition must be accompanied by a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, stating the date that the deposit was attempted and that the USPS refused to accept the correspondence, and be signed by such person subject to the conditions prescribed in 37 CFR 10.18.

Certificates of Mailing Under 37 CFR 1.8

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.

Petitioners provided, on 8 July, 2002, with a request for a corrected filing receipt, a copy of the Express Mail customer label showing a "date-in" of 16 November, 2001, and bearing Express Mail number EL531588165US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file. Based on the submission filed on 8 July, 2002, and counsel's statement filed with the present petition, it is concluded that the present application would have been filed on 16 November, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of 16 November, 2001.

No petition fee is required.

The application is being returned to the Office of Initial Patent Examination for correction of the filing date to 16 November, 2001.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KATTEN MUCHIN ROSENMAN LLP
575 MADISON AVENUE
NEW YORK NY 10022-2585

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OFFICE OF PETITIONS

In re Patent No. 7,660,324	:	DECISION ON REQUEST FOR
OGUCHI et al.	:	RECONSIDERATION OF
Issue Date: February 9, 2010	:	PATENT TERM ADJUSTMENT AND
Application No. 09/988,958	:	NOTICE OF INTENT TO ISSUE
Filed: November 19, 2001	:	CERTIFICATE OF CORRECTION
Atty. Docket No. FUJZ 19.185	:	

This is a decision on the petition filed on January 26, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred sixteen (516) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.** The term of the above-identified patent is extended or adjusted by **eight hundred forty-two (842) days**.

Patentees do not dispute the calculation of 888 days of PTO delay ("A delay"). However, patentees dispute the reduction of 96 days associated with the filing of the Information Disclosure Statement ("IDS") on November 6, 2009, after the mailing of the notice of allowance pursuant to 37 CFR 1.704(c)(10). Specifically, patentees assert that the Examiner acted on the IDS and mailed a responsive communication on December 16, 2009. Patentees contend that they should have been assessed 41 days of applicant delay (not 96 days) for the period beginning on the

filing date of the IDS, November 6, 2009, and ending on the mailing date of the communication in response to the IDS, December 16, 2009. See 37 CFR 1.704(c)(10).

Patentees' contention is well taken. A review of the application history confirms that patentees' calculation of the period of reduction of patent term under 37 CFR 1.704(c)(10) for the filing of the IDS on November 6, 2009, is correct. Therefore, the period of reduction of 96 days will be removed and a period of reduction of 41 days will be entered.

Further, a review of the record reveals that a period of adjustment pursuant to 37 CFR 1.702(b) should have been entered for the Office issuing the patent in excess of three years after filing the application ("B delay"). As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the B delay period, the over three year period begins on November 20, 2004, and ends on May 7, 2006, the day before the RCE was filed, and is 534 days. See 35 U.S.C. 154(b)(1)(B)(i). However, A delay and B delay overlap by 208 days (from November 20, 2004 to June 15, 2005).

Accordingly, the patent term adjustment is 842 days (888 days of A delay + 534 days of B delay - 208 days of overlap - 372 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office will charge the Deposit Account for the $200.00 fee set forth in 37 CFR 1.18(e) as authorized. No additional fees are required.

This matter is being referred to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **eight hundred forty-two (842) days.**

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT: 7,660,324 B2

DATED: Feb. 9, 2010 **DRAFT**

INVENTOR(S): OGUCHI 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 461 days.

Delete the phrase "by 461 days" and insert – by 842 days--

Day : Wednesday

PALM INTRANET

Date: 7/14/2010
Time: 08:32:35

PTA Calculations for Application: 09/988958			
Application Filing Date:	11/19/2001	PTO Delay (PTO):	888
Issue Date of Patent:	02/09/2010	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	427
Post-Issue Petitions:	0	Total PTA (days):	842
PTO Delay Adjustment:	381		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
111	07/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	326		
110	07/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		41	
109	07/14/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	96		
105.5	01/20/2010	PTA 36 MONTHS			
105	02/09/2010	PATENT ISSUE DATE USED IN PTA CALCULATION			
104	01/15/2010	EXPORT TO FINAL DATA CAPTURE			
103	01/04/2010	DISPATCH TO FDC			
102	12/31/2009	APPLICATION IS CONSIDERED READY FOR ISSUE			
101	12/22/2009	ISSUE FEE PAYMENT VERIFIED			
100	12/22/2009	ISSUE FEE PAYMENT RECEIVED			
99	12/16/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
98	12/15/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
97	11/06/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
96	11/18/2009	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
95	11/17/2009	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
94	11/06/2009	ELECTRONIC INFORMATION DISCLOSURE STATEMENT		96	
93	11/06/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
92	10/29/2009	FINISHED INITIAL DATA CAPTURE			
91	09/28/2009	EXPORT TO INITIAL DATA CAPTURE			

90	09/23/2009	MAIL NOTICE OF ALLOWANCE			
89	09/23/2009	ISSUE REVISION COMPLETED			
88	09/23/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
87	09/23/2009	DOCUMENT VERIFICATION			
86	09/23/2009	NOTICE OF ALLOWABILITY			
85	08/21/2009	DATE FORWARDED TO EXAMINER			
84	08/17/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
83	08/21/2009	DATE FORWARDED TO EXAMINER			
82	08/17/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)		62	78
81	08/21/2009	DISPOSAL FOR A RCE / CPA / R129			
80	08/17/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
79	08/17/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
78	03/16/2009	MAIL FINAL REJECTION (PTOL - 326)			
77	03/15/2009	FINAL REJECTION			
73	01/10/2009	DATE FORWARDED TO EXAMINER			
72	01/05/2009	RESPONSE AFTER NON-FINAL ACTION		32	69
71	01/05/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
70	10/05/2008	CASE DOCKETED TO EXAMINER IN GAU			
69	09/04/2008	MAIL NON-FINAL REJECTION			
68	09/02/2008	NON-FINAL REJECTION			
65	08/13/2008	DATE FORWARDED TO EXAMINER			
64	08/08/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
63	08/13/2008	DATE FORWARDED TO EXAMINER			
62	08/08/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
61	08/13/2008	DISPOSAL FOR A RCE / CPA / R129			
60	08/08/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
59	06/26/2008	NOTICE OF APPEAL FILED		92	50
58	06/26/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
57	06/27/2008	MAIL ADVISORY ACTION (PTOL - 303)			
56	06/23/2008	ADVISORY ACTION (PTOL-303)			
55	05/27/2008	NEW OR ADDITIONAL DRAWING FILED			

54	06/07/2008	DATE FORWARDED TO EXAMINER			
53	05/27/2008	AMENDMENT AFTER FINAL REJECTION			
52	05/27/2008	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	12/26/2007	MAIL FINAL REJECTION (PTOL - 326)			
49	12/20/2007	FINAL REJECTION			
47	10/18/2007	DATE FORWARDED TO EXAMINER			
46	10/11/2007	RESPONSE AFTER NON-FINAL ACTION		30	43
45	10/11/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
44	10/04/2007	CASE DOCKETED TO EXAMINER IN GAU			
43	06/11/2007	MAIL NON-FINAL REJECTION			
42	06/08/2007	NON-FINAL REJECTION			
41	03/29/2007	DATE FORWARDED TO EXAMINER			
40	03/19/2007	RESPONSE AFTER NON-FINAL ACTION		60	38
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36	09/18/2006	CASE DOCKETED TO EXAMINER IN GAU			
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34	07/31/2006	SUPPLEMENTAL RESPONSE			
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32	06/16/2006	DATE FORWARDED TO EXAMINER			
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30	05/17/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE RCE AMENDMENT			
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28	05/08/2006	NEW OR ADDITIONAL DRAWING FILED			
27	05/16/2006	DATE FORWARDED TO EXAMINER			
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19	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
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16	10/21/2005	DATE FORWARDED TO EXAMINER			
15	10/12/2005	RESPONSE AFTER NON-FINAL ACTION		27	12
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9	03/10/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
8	03/11/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	01/07/2002	CASE DOCKETED TO EXAMINER IN GAU			
6.7	11/19/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	11/19/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	11/19/2001	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
4	12/05/2001	APPLICATION DISPATCHED FROM OIPE			
3	12/04/2001	CORRESPONDENCE ADDRESS CHANGE			
2	11/26/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/19/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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APR 1 5 2005

OFFICE OF PETITIONS

Shahin Ahmedov
P.O. Box 670
Near East University
Lefkosha, K.K.T.C/Mersin 10 TR TURKEY

In re Application of	:	
Shahin Ahmedov	:	
Application No. 09/988,961	:	DECISION ON PETITION
Filed: January 7, 2002	:	
Title: NON-INVASIVE METHOD OF	:	
CARDIAC OUTPUT MEASUREMENT	:	
THROUGH ASSESSMENT OF SKIN	:	
THERMAL RESPONSE	:	

This is a decision on the petition filed August 16, 2004, under 37 C.F.R. §1.137(a)[1], 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 December 19, 2002, which set a shortened statutory period for reply of three (3) months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on March 20, 2003. A Notice of Abandonment was mailed on July 22, 2003.

With the instant petition, Petitioner has submitted a response, a substitute specification, and the petition fee.

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1 A grantable petition pursuant to 37 CFR 1.137(a) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(l);
(3) A showing to the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

Petitioner has met requirements (1) and (2) above. The fourth requirement is not applicable.

As to item (3), the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 37 CFR 1.137(a).

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

"In the specialized field of patent law, . . . the Commissioner of Patent and Trademarks is primarily responsible for the application and enforcement of the various narrow and technical statutory and regulatory provisions. The Commissioner's interpretation of those provisions is entitled to considerable deference."[2]

"[T]he Commissioner's discretion cannot remain wholly uncontrolled, if the facts **clearly** demonstrate that the applicant's delay in prosecuting the application was unavoidable, and that the Commissioner's adverse determination lacked **any** basis in reason or common sense."[3]

"The court's review of a Commissioner's decision is 'limited, however, to a determination of whether the agency finding was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[4]

"The scope of review under the arbitrary and capricious standard is narrow and a court is not to substitute its judgment for that of the agency."[5]

The standard

"[T]he question of whether an applicant's delay in prosecuting an application was unavoidable must be decided on a case-by-case basis, taking all of the facts and circumstances into account."[6] The general question asked by the Office is: "Did petitioner act as a reasonable and prudent person in relation to his most important business?"[7]

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

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

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

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

6 Id.

7 See In re Mattulah, 38 App. D.C. 497 (D.C. Cir. 1912).

Nonawareness of a PTO rule will not constitute unavoidable delay[8]. The burden of showing the cause of the delay is on the person seeking to revive the application[9].

A delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice, or the MPEP is not rendered "unavoidable" due to either the applicant's reliance upon oral advice from USPTO employees or the USPTO's failure to advise the applicant to take corrective action[10].

The 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[11].

A petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable[12]."

The portions of the CFR and the MPEP relevant to the abandonment of this application

37 C.F.R. § 1.8 sets forth, in part:

§ 1.8 Certificate of mailing or transmission.

(a) Except in the cases enumerated in paragraph (a)(2) of this section, correspondence required to be filed in the Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.
(1) Correspondence will be considered as being timely filed if:
(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:
(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail; or
(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6(d); and
(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the

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

9 Id.

10 See In re Sivertz, 227 USPQ 255, 256 (Comm'r Pat. 1985).

11 In re Mattullath, 38 App. D.C. at (1912)(quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), aff'd, 143 USPQ 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913).

12 Haines, 673 F. Supp. at 314, 316-17; 5 USPQ2d at 1131-32.

correspondence would be mailed or transmitted on or before the date indicated.
(2) The procedure described in paragraph (a)(1) of this section does not apply to, and no benefit will be given to a Certificate of Mailing or Transmission on, the following:
(i) Relative to Patents and Patent Applications —
(A) The filing of a national patent application specification and drawing or other correspondence for the purpose of obtaining an application filing date, including a request for a continued prosecution application under § 1.53(d);
(B) The filing of correspondence in an interference which an examiner-in-chief orders to be filed by hand or "Express Mail";
(C) The filing of agreements between parties to an interference under 35 U.S.C. 135(c);
(D) The filing of an international application for patent;
(E) The filing of correspondence in an international application before the U.S. Receiving Office, the U.S. International Searching Authority, or the U.S. International Preliminary Examining Authority;
(F) The filing of a copy of the international application and the basic national fee necessary to enter the national stage, as specified in § 1.495(b).

...

(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 Patent and Trademark Office, and the application is held to be abandoned or 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.

[41 FR 43721, Oct. 4, 1976; 43 FR 20461, May 11, 1978; para. (a). 47 FR 47381, Oct. 26, 1982, effective Oct. 26, 1982; para. (a),48 FR 2708, Jan. 20, 1983; para. (a) 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; para. (a), 49 FR 5171, Feb. 6, 1985, effective Mar. 8, 1985; 52 FR 20046, May 28, 1987; subparas. (a)(2)(xiv)-(xvi), 54 FR 37588, Sept. 11, 1989, effective Nov. 16, 1989; revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; para. (a) revised, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (a)(2)(i)(A) & (b) revised; 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a)(2)(i)(F) revised, 67 FR 520, Jan. 4, 2002, effective Apr. 1, 2002; para. (b)(3) revised, 68 FR 14332, Mar. 25, 2003, effective May 1, 2003; para. (a)(2)(ii) removed and reserved, 68 FR 48286, Aug. 13, 2003, effective Sept. 12, 2003]

37 C.F.R. § 1.134: Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

[47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

37 C.F.R. §1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.
(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include

such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

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

[Paras. (a), (b), and (c), 47 FR 41276, Sept. 17, 1982, effective Oct. 1, 1982; para. (d) deleted, 49 FR 555, Jan. 4, 1984, effective Apr. 1, 1984; revised, 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997]

Section 512 of the MPEP sets forth, in part:

Under 37 CFR 1.8, a person may state on certain papers directed to the Office (exceptions are stated in 37 CFR 1.8), the date on which the paper will be deposited in the United States Postal Service or transmitted by facsimile. If the date stated is within the period for reply, the reply in most instances will be considered to be timely. This is true even if the paper does not actually reach the Office until after the end of the period for reply. The Certificate of Mailing procedure does not apply to papers mailed in a foreign country.

The Certificate of Transmission procedure, however, also applies to papers transmitted to the Office from a foreign country provided that the correspondence being transmitted is not prohibited from being transmitted by facsimile and is not otherwise precluded from receiving the benefits under 37 CFR 1.8.

It should be noted, however, that the Office will continue its normal practice of stamping the date of receipt ("Office Date" Stamp) on all papers received through the mail or by facsimile except those filed under 37 CFR 1.10 (See MPEP § 513). The date stamped will also be the date which is entered on Office records and from which any subsequent periods are calculated. For example, 37 CFR 1.192 gives an appellant 2 months from the date of the appeal to file an appeal brief. For example, if the last day to reply to a final rejection was November 10, 1997, and applicant deposited a Notice of Appeal with fee in the U.S. mail on November 10, 1997, and so certified, that appeal is timely even if it was not received in the U.S. Patent and Trademark Office until November 16, 1997. Since the date of receipt will be used to calculate the time at which the brief is due, the brief was due on January 16, 1998. This is 2 months after the Mail Center date.

37 CFR 1.8(a)(2)(i)(A) specifically refers to a request for a continued prosecution application (CPA) filed under 37 CFR 1.53(d) as a correspondence filed for the purposes of obtaining an application filing date and the procedures and benefit set forth in 37 CFR 1.8(a)(1) are not applicable to a request for a CPA. The date on a certificate of mailing or transmission (37 CFR 1.8(a)) of a CPA is not controlling or even relevant. A CPA filed by facsimile transmission will not be accorded a filing date as of the date on the certificate of transmission unless Office records indicate, or applicant otherwise establishes pursuant to 37 CFR 1.6(f), receipt in the Office of the complete CPA on the date on the certificate of transmission and that date is not a Saturday, Sunday, or Federal holiday within the District of Columbia.

[41 FR 43721, Oct. 4, 1976; 43 FR 20461, May 11, 1978; para. (a). 47 FR 47381, Oct. 26, 1982, effective Oct. 26, 1982; para. (a),48 FR 2708, Jan. 20, 1983; para. (a) 49 FR 48416, Dec. 12, 1984, effective Feb. 11, 1985; para. (a), 49 FR 5171, Feb. 6, 1985, effective Mar. 8, 1985; 52 FR 20046, May 28, 1987; subparas. (a)(2)(xiv)-(xvi), 54 FR 37588, Sept. 11, 1989, effective Nov. 16, 1989; revised, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; para. (a) revised, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (a)(2)(i)(A) & (b) revised; 62 FR 53131, Oct. 10, 1997, effective Dec. 1, 1997; para. (a)(2)(i)(F) revised, 67 FR 520, Jan. 4, 2002, effective Apr. 1, 2002]

Section 503 of the MPEP, entitled Application Number and Filing Receipt, sets forth, in part:

RETURN POSTCARD

If a receipt of any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. The USPTO will stamp the

receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

The identifying data on the postcard should be so complete as to clearly identify the item for which receipt is requested. For example, the postcard should identify the applicant's name, application number (if known), confirmation number (if known), filing date, interference number, title of the invention, etc. The postcard should also identify the type of paper being filed, e.g., new application, affidavit, amendment, notice of appeal, appeal brief, drawings, fees, motions, supplemental oath or declaration, petition, etc., and the number of pages being submitted. 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, number of pages of cover sheet (provisional application).

The postcard receipt will not serve as prima facie evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. Each separate component should be specifically and properly itemized on the postcard. Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as prima facie evidence of receipt of those items.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received by the USPTO, the postcard receipt will not serve as prima facie evidence of receipt of that item in the USPTO.

Application of the standard to the current facts and circumstances

On December 19, 2002, Applicant was mailed a non-final Office Action, which required a substitute specification and gave a two-month period for response.

With the instant Petition, Petitioner sets forth that a response to this non-final Office Action was submitted to the Office on February 17, 2003. Petitioner states that upon receiving the Notice of Abandonment, he "decided that the letter was sent to [him] by mistake[13]."

This argument is not persuasive.

The Patent Office file is the official record of the papers filed in this application. The official file has been reviewed, and the response which was purportedly submitted on February 17, 2003has not been located.

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13 Petition, page 3.

It is noted that Petitioner has submitted neither a postcard receipt to evince receipt of the drawings, nor a certificate of mailing pursuant to 37 C.F.R.§1.8 to establish that they were sent.

Petitioner has submitted a photocopy of what appears to be an envelope which contains 5 date stamps containing dates ranging from February 6, 2003 to February 24, 2003.

The PTO has a well established and well publicized practice of providing a receipt for papers filed in the PTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the PTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO. See section 503, Manual Of Patent Examining Procedure (MPEP 503).

Similarly, the PTO has a well established and well publicized practice by which practitioners may provide proof that papers were submitted to the Office on a particular date. Any papers which are required to be filed in the PTO within a set period of time will be considered as being timely filed if a certificate of mailing is properly prepared and executed. See 37 C.F.R. §1.8.

Petitioner has not submitted a copy of a returned postcard receipt, and the submitted response does not contain a certificate of mailing. For these reasons, Petitioner is not able to characterize the abandonment as "unintentional."

It follows that the renewed petition must be **DISMISSED**.

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

On renewed petition, Petitioner will need to furnish the evidence discussed above, in order to establish that that the replacement drawings were received by the Office, or at least sent to the same, on February 17, 2003.

Since Petitioner has provided neither of these forms of proof, it appears that the Petitioner has neither, and cannot furnish the evidence which would be required in order to establish that the delay was unavoidable. If this is in fact the case, Petitioner may also wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b)[14].

---

14 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.

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail[15], hand-delivery[16], or facsimile[17].

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

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski

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

Encl. Request for Alert Concerning Submitted Petitions

15 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
16 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
17 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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www.uspto.gov

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Pillsbury, Winthrop, Shaw,
Pittman, LLP
P.O. Box 10500
McLean, VA 22102

In re Application of	:	
Mark W. Sylor	:	
Application No. 09/988,976	:	DECISION ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. 019287-0317333	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 13, 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.

This application became abandoned for failure to timely pay the issue and publication fees on or before May 7, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed February 7, 2007. Accordingly, the date of abandonment of this application is May 8, 2007.

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 pay the issue fee. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. See 35 U.S.C. § 41(a)(7) and 151 and MPEP § 711.03(c)(II)(A)(1). Therefore, the filing of a request for continued examination (RCE) under 37 CFR § 1.114 is not a proper reply under 37 CFR 1.137(a)(1) or (b)(1) in this case. Therefore, before revival of this application can be effected, petitioner must submit payment of this issue fee.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

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

By Mail: Mail Stop PETITION
Commissioner for Patents
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 Kimberly Inabinet at (571) 272-4618.

Frances Hicks
Petitions Examiner
Office of Petitions

cc: Syed Jafar Ali
P.O. Box 10500
McLean, VA 22102

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Pillsbury, Winthrop, Shaw,
Pittman, LLP
P.O. Box 10500
McLean, VA 22102

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MAR 04 2008

In re Application of	:	
Mark W. Sylor	:	
Application No. 09/988,976	:	DECISION ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. 019287-0317333	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed January 23, 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 May 7, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed February 7, 2007. Accordingly, the date of abandonment of this application is May 8, 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 $1440.00 and the publication fee of $300, (2) the petition fee of $1500.00, and (3) a proper statement of unintentional delay. Accordingly, the issue and publication fees are accepted as being unintentionally delayed.

The application is revived for consideration of a submission under 37 CFR 1.114 (request for continued examination) filed September 13, 2007.

Petitioner is advised that the issue fee paid in the above-identified application cannot be refunded. However, if the above application is again allowed, petitioner may request that the issue fee paid on January 23, 2008, be applied towards the issue fee paid on January 23, 2008, be applied towards the issue fee on January 23, 2008, be applied towards the issue fee required by the new Notice of Allowance and Fee(s) Due.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

The application file is being forwarded to Technology Center AU 2173, for further processing of the request for continued examination under 37 CFR 1.114 filed September 13, 2007.

Andrea Smith
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 5

Kenneth D. Tremain
Crompton Corporation
Benson Road, Middlebury, CT 06749

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JAN 0 8 2003

OFFICE OF PETITIONS

In re Application of
Bing-Lin Chin
Application No. 09/989,038
Filed: November 21, 2001
Attorney Docket No. 0063-PA

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 3, 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 December 5, 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 February 3, 2002.

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

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

Latrice Bond

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

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

DOCKET ADMINISTRATOR
AGERE SYSTEMS, INC.
P.O. BOX 614
BERKELEY HEIGHTS, NJ 07922

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APR 2 1 2003

OFFICE OF PETITIONS

In re Application of :
Awater, et al. :
Application No. 09/989,052 :
Filed: November 20, 2001 :
Attorney Docket No. 7-3-15 :

ON PETITION

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

The petition is **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 December 4, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 5, 2002.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ALFRED W. ZAHER, ESQ.
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE-46TH FLOOR
PHILADELPHIA PA 19103

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NOV 17 2004

OFFICE OF PETITIONS

In re Application	:
Jeffrey L. Garwin	:
Application No. 09/989,092	: DECISION ON APPLICATION
Filed: November 19, 2001	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 13222.00014	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR 1.705(b)," filed September 2, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred forty-five (245) days to two hundred fifty-seven (257) 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 two hundred fifty-seven **(257)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred forty-five (245) days. On September 2, 2004, applicants timely[1] submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days. Applicants dispute the reduction of twelve (12) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed December 3, 2001.

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

---

[1] PALM records indicate that the Issue Fee was received in the Office on September 2, 2004.

The Office initially determined a patent term adjustment of two hundred forty-five (245) days based on an adjustment for PTO delay of two hundred fifty-seven (257) 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 twelve (12) days, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The reduction of twelve (12) days of applicant delay is at issue.

The reduction of 12 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed December 3, 2001, is of record in the application with a date of receipt by the Office of February 20, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as March 15, 2002 or assessed applicants a delay of twelve (12) days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicant's delay should have been assessed as zero (0) days. Applicants did not delay in replying to the Notice to File Missing Parts of Application and thus did not fail to engage in reasonable efforts to conclude prosecution of the application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days.

The Office acknowledges submission of $200.00 and an additional amount of $400 for Reinstatement for part of the period of adjustment reduced pursuant to 37 CFR 1.704(b). However, the fee set forth in 37 CFR 1.18(e) is set at $200.00 and since no additional fees are required and in view of the decision above, $400.00 will be credited to deposit account number 23-3050 as authorized in the request filed September 2, 2004.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.

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

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.
09/989,092	11/19/2001	Jeffrey L. Garwin	13222.00014	9289

7590 12/06/2004

ALFRED W. ZAHER, ESQ.
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE-46TH FLOOR
PHILADELPHIA, PA 19103

EXAMINER
WINSTON, RANDALL O

ART UNIT	PAPER NUMBER
1654	

DATE MAILED: 12/06/2004

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
P.O. Box 1450
Alexandria, VA 22313-1450
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ALFRED W. ZAHER, ESQ.
WOODCOCK WASHBURN LLP
ONE LIBERTY PLACE-46TH FLOOR
PHILADELPHIA PA 19103

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NOV 17 2004

OFFICE OF PETITIONS

In re Application	:
Jeffrey L. Garwin	:
Application No. 09/989,092	: DECISION ON APPLICATION
Filed: November 19, 2001	: FOR PATENT TERM ADJUSTMENT
Attorney Docket No. 13222.00014	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 CFR 1.705(b)," filed September 2, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred forty-five (245) days to two hundred fifty-seven (257) 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 two hundred fifty-seven **(257)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred forty-five (245) days. On September 2, 2004, applicants timely[1] submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days. Applicants dispute the reduction of twelve (12) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed December 3, 2001.

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

---

[1] PALM records indicate that the Issue Fee was received in the Office on September 2, 2004.

The Office initially determined a patent term adjustment of two hundred forty-five (245) days based on an adjustment for PTO delay of two hundred fifty-seven (257) 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 twelve (12) days, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The reduction of twelve (12) days of applicant delay is at issue.

The reduction of 12 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed December 3, 2001, is of record in the application with a date of receipt by the Office of February 20, 2002. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as March 15, 2002 or assessed applicants a delay of twelve (12) days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicant's delay should have been assessed as zero (0) days. Applicants did not delay in replying to the Notice to File Missing Parts of Application and thus did not fail to engage in reasonable efforts to conclude prosecution of the application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is two hundred fifty-seven (257) days.

The Office acknowledges submission of $200.00 and an additional amount of $400 for Reinstatement for part of the period of adjustment reduced pursuant to 37 CFR 1.704(b). However, the fee set forth in 37 CFR 1.18(e) is set at $200.00 and since no additional fees are required and in view of the decision above, $400.00 will be credited to deposit account number 23-3050 as authorized in the request filed September 2, 2004.

The Office will forward the file to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.

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

UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

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FEB 21 1997

OFFICE OF PETITIONS
PATENTS

Edward W. Porter
Porter and Associates
One Kendall Square
Cambridge, MA 02139

In re Application of
Passera, Thorp, Beckerle and
Zyszkowski
Application No. 08/624,844
Filed: APT-95-2
For: Systems for Analyzing and
Computing Data Items

DECISION ACCORDING STATUS
UNDER 37 CFR 1.47(a)

Papers filed on July 30, 1996 (a complete copy was submitted by facsimile on October 18, 1996) in response to a "Notice To File Missing Parts of Application Filing Date Granted," mailed May 10, 1996 included:

(1) a Declaration and Power of Attorney signed by joint inventors Passera, Thorp and Beckerle in compliance with 37 CFR 1.63;

(2) a petition under 37 CFR 1.47(a) setting forth the last known address of joint inventor Mr. Zyszkowski, providing proof that a copy of the application was sent to the non-signing joint inventor for review, proof of facts that from which a conclusion may reasonably be made that the joint inventor refuses to sign the declaration. The petition fee was also included;

(3) a petition for a two month extension of time and fee;

(4) a copy of the Notice to File Missing Parts, the filing fee, additional claims fee and the surcharge.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). The declaration is accepted as signed by the inventors on behalf of the non-signing inventor.

As provided in Rule 1.47(a), this Office will forward notice of this application's filing to non-signing inventor Zyszkowski at the address given in the Declaration. Notice

EXPRESS MAIL NO. EL056825715US

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 Tyson

Karin Tyson
Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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ROBERTS MLOTKOWSKI SAFRAN & COLE, P.C.
Intellectual Property Department
P.O. Box 10064
MCLEAN, VA 22102-8064

Mail Date: 04/20/2010

Applicant	: Ralf Lange	: DECISION ON REQUEST FOR
Patent Number	: 6521832	: RECALCULATION of PATENT
Issue Date	: 02/18/2003	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/989,099	: OF WYETH
Filed	: 11/21/2001	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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JONES DAY
222 EAST 41ST STREET
NEW YORK, NY 10017

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NOV 08 2004

OFFICE OF PETITIONS

In re Patent No. 6,783,533	:	
Issue Date: August 31, 2004	:	
Application No. 09/898,169	:	ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No. 8932-583	:	

This is a decision on the petition filed September 28, 2004, to waive the rules and accept the correction of the assignee on the front page of the above-identified patent.

The petition is granted.

In view of the granting of the instant petition, petitioner may request a Certificate of Correction pursuant to the provisions of 37 CFR 1.323 and pay the required fee therefor of $100.

This matter is being referred to Files Repository.

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

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

Copied from 09898169 on 03/07/2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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JONES DAY
222 EAST 41ST STREET
NEW YORK, NY 10017

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MAR 08 2005

OFFICE OF PETITIONS

In re Patent No. 6,783,533 :
Issue Date: August 31, 2004 :
Application No. 09/989,169 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. 8932-583 :

This is a decision on the petition filed September 28, 2004, which is being treated as a petition under 37 CFR 3.81(b)[1] to accept the correction of the assignee on the front page of the above-identified patent.

The petition is granted.

Telephone inquiries concerning this matter may be directed to Wan Laymon at (571) 272-3220. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This matter is being referred to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

[1]*See* Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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ANDREA Q. RYAN
SANOFI-AVENTIS U.S. LLC
1041 ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER NJ 08807-0800

MAILED

MAR 29 2010

OFFICE OF PETITIONS

In re Application of	:	
Jordan et al.	:	DECISION ON REQUEST
Patent Number: 7,563,582	:	FOR RECONSIDERATION OF
Issue Date: 07/21/2009	:	PATENT TERM ADJUSTMENT
Application No. 09/989188	:	and
Filing or 371(c) Date: 11/21/2001	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number: DEAV2000A051USNP	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 21, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred seventy-seven (1177) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand one hundred seventy-seven (1177) days is **GRANTED to the extent indicated herein.**

As to the "B" delay, the period is 703 days, not 859 days. This period begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a), November 22, 2004[1], and ends on March 22, 2007[2], the day before the Request for Continued Examination ("RCE") was filed, or 851 days, but not including the number of days beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31, and ending on the day before the RCE was filed, or 148 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Thus, the "B" delay period is 703 (851 days – 148 days), not 859 days.

[1] Petitioner states that "the period of 'B' delay commences on November 21, 2004 ([the] three year anniversary of the filing date;" however, the period of "B" delay begins on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a). Petition at p.2.

[2] Petitioner avers that the RCE was filed on March 30, 2007; however, Office records confirm that the RCE was filed on March 23, 2007.

opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days,** whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The 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 Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand sixty-eight **(1068)** days.

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.

Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,563,582 B2

DATED : **July 21, 2009**

INVENTOR(S) : Jordan 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 510 days.

Delete the phrase "by 510 days" and insert – by 1068 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Alexandria, VA 22313-1450
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Paper No. 7

GIBBONS, DEL DEO, DOLAN, GRIFFINGER & VECCHIONE
1 RIVERFRONT PLAZA
NEWARK NJ 07102-5497

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SEP 16 2004

OFFICE OF PETITIONS

In re Application of :
Newsteder :
Application No. 09/989,202 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. AID-3.2.001/4203 :
For: DIRECTORY INFORMATION SYSTEM
FOR PROVIDING TOLL FREE NUMBERS

This is a decision on the petition under 37 CFR 1.137(b), filed on May 17, 2004 (certificate of mailing date May 14, 2004), to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed October 6, 2003, which set an extendable period for reply of three (3) months. No extensions of time having been obtained pursuant to 37 CFR 1.136(a) and no reply being received in the Office, this application became abandoned on January 7, 2004. The filing of the instant petition precedes the filing of A Notice of Abandonment.

Applicant has submitted a proper reply in the form of an amendment, an acceptable statement of the unintentional nature of the delay in responding to the October 6, 2003 non-final Office action, and the petition fee.

The petition is GRANTED.

After the mailing of this decision the application will be forwarded to Technology Center 2100 further examination.

Telephone inquiries pertaining to this decision may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

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.
09/989,228	11/20/2001	Jody Garrard	US018188	9687

7590 11/03/2005

Corporate Counsel
Philips Electronics North America Corporation
580 White Plains Road
Tarrytown, NY 10591

EXAMINER
SUNG, CHRISTINE

ART UNIT	PAPER NUMBER
2878	

DATE MAILED: 11/03/2005

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

Copied from 10182358 on 05/10/2006

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

In re Patent No. GARRARD ET AL.	:	
Issue Date: 08/10/2004	:	**DECISION GRANTING**
Appl No.: 09/989,228	:	**PETITION**
Filed: November 20, 2001	:	*37 CFR 1.324*
For: Method and Apparatus for a Multi-planar Imaging System	:	

This is a decision on the petition under 37 CFR 1.48, filed 07/02/2004. In view of the fact that the patent has already issued, the request under 37 CFR 1.48 has been treated as a petition to correct inventorship under 37 CFR 1.324.

The petition is granted.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

David P. Porta
Supervisory Patent Examiner
Art Unit 2884
Patent Examining Group 2800

Corporate Counsel
Philips Electronics North America Corporation
580 White Plains Road
Tarrytown, NY 10591

Copied from 10182358 on 05/10/2006

UNITED STATES 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: October 20, 2005
TO: Certificates of Correction Branch
FROM: David P. Porta
SPE, Art Unit ~~2878~~ 2884
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6774371 as specified on the attached Certificate.

David P. Porta, SPE
Art Unit ~~2878~~
2884

Copied from 10182358 on 05/10/2006

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6774371
Patented: 08/10/2004

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Jody Garrard Elk Grove, California
Jeffrey Hallett Livermore, California
Moataz Karmalawy San Ramon, California

David P. Porta
Supervisory Patent Examiner
Art Unit 2884

Copied from 10182358 on 05/10/2006

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.

Corey Scott
FISH & NEAVE IP GROUP
ROPES & GRAY LLP
One International Place
Boston, MA 02110-2624

MAILED
JUL 0 5 2005
Technology Center 2100

In re Application of:
Allen M. Razdow
Application No. 09/989,241
Filed: November 20, 2001
For: APPARATUS AND METHODS FOR MONITORING PERFORMANCE OF PARALLEL COMPUTING

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY OR AGENT

This is a decision on the Request To Withdraw from Representation filed June 17, 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 June 17, 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

for Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
(571) 272-3613

cc: Customer Number 48239

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR NY 10510

COPY MAILED

MAR 2 0 2009

OFFICE OF PETITIONS

In re Application of :
Ming-Hung LIN :
Application No. 09/989,255 :
Filed: November 20, 2001 :
Attorney Docket No. TW 000008 :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 06, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 14, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 15, 2008.

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 $1620.00; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of May 14, 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) 272-4231.

The application file is being referred to Technology Center AU 2617 for appropriate action on the concurrently filed amendment.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

Cc: **MATTHEW I. COHEN**
VOLPE AND KOEING, P.C.
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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NIXON & VANDERHYE P.C.
901 NORTH GLEBE ROAD, 11TH FLOOR
ARLINGTON, VA 22203-1808

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DEC 13 2005

OFFICE OF PETITIONS

In re Application of :
Alan D. Schreiber et al :
Application No. 09/989,298 :
Filed: November 21, 2001 :
Attorney Docket No. 555-63

ON PETITION

This is a decision on the petition, filed December 12, 2005 under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on July 8, 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 Irvin Dingle at (571) 272-3210.

This matter is being referred to Technology Center AU 1645 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Irvin Dingle
Petitions Examiner
Office of Petitions

---

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

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,301	11/19/2001	Matti Puputti	P2496US00	9503

30671 7590 07/09/2010
DITTHAVONG MORI & STEINER, P.C.
918 Prince Street
Alexandria, VA 22314

EXAMINER
CHOWDHURY, SUMAIYA A

ART UNIT	PAPER NUMBER
2421	

NOTIFICATION DATE	DELIVERY MODE
07/09/2010	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):

docket@dcpatent.com

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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DITTHAVONG MORI & STEINER, P.C.
918 Prince Street
Alexandria VA 22314

MAILED

JUL 09 2010

DIRECTOR OFFICE
TECHNOLOGY CENTER 2400

In re Application of:
Matti Puputti
Application No. 09/989,301
Filed: November, 19, 2001
For: METHOD AND APPARATUS FOR DYNAMIC PROVISIONING OF IP-BASED SERVICES IN A DVB NETWORK

DECISION SUA SPONTE WITHDRAWING HOLDING OF ABANDONMENT

This is a decision, *sua sponte*, withdrawing the holding of abandonment of the above-identified application.

This application was held abandoned for failure to timely file a proper reply to the Final Rejection mailed on August 3, 2009. A Notice of Abandonment was mailed on May 3, 2010.

A review of the file record indicates that a one-Month Extension of time, a Pre-Appeal Brief and a Notice of Appeal were submitted on December 3, 2009. 37 CFR § 41.37 provides a 2-month from the date of the Notice of Appeal for the appellant to file an appeal brief. This 2-month time period for a patent application may be extended under 37 CFR 1.136(a) (by 5-months) giving the Applicant a total of 7-months time period running from the receipt of the Notice of Appeal. This time period ended on July 3, 2010.

However, since the Pre-Appeal decision was mailed on February 23, 2010, the time period for filing an appeal brief will reset to one-month from the mailing of the pre-appeal decision or the balance of the 2-month time period running from the receipt of the Notice of Appeal whichever is greater. Further, the time period for filing of the appeal brief is again extendable under 37 CFR 1.136 (by 5-months) based on upon the mailing date of the pre-appeal decision. **Therefore, the maximum time period for the applicant to respond will end on August 3, 2010.**

Although no petition or request to withdraw the holding of abandonment in this application has been filed, the holding of Abandonment is hereby withdrawn.

Any inquiry concerning this decision should be directed to the undersigned whose telephone number is (571) 272 -7294.

Christopher Grant
Quality Assurance Specialist
Technology Center 2400
Network, Multiplex, Cable and Security

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)
6,900,442	2005-05-31	09989319	2001-11-20	CS-2311 RJS

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

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Richard J. Streit/	Date (YYYY-MM-DD)	2009-08-17
Name	Richard J. Streit	Registration Number	25765

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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In re Patent No. 6900442
Issue Date: May 31,2005
Application No. 09989319
Filed: November 20,2001
Attorney Docket No. U 013728-9

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

This is a decision on the electronic petition, filed August 17,2009 ,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 August 17,2009 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

DATE 5/30/07

APPLICATION NUMBER 09989334

DOC CODE PetDec

DOC DATE 5/31/02

DELIVER THE ATTACHED FIFLE/DOCUMENT TO THE TC SCANNING CENTER

CONTRACTOR: THE ATTACHED FILE/DOCUMENT MUST BE INDEXED AND SCANNED INTO IFW WITHIN **8** WORK HOURS; UPLOADING OF THE SCANNED IMAGES SHOULD OCCUR NO LATER THAN **16** WORK HOURS FOLLOWING RECEIPT OF THIS REQUEST

AFTER SCANNING, ORIGINAL DOCUMENTS SHOULD BE BOXED IN ACCORDANCE WITH INSTRUCTIONS

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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PEARL COHEN ZEDEK LATZER, LLP
1500 BROADWAY 12TH FLOOR
NEW YORK NY 10036

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MAY 3 1 2007

OFFICE OF PETITIONS

In re Application of	:	
Gill, Yoram	:	
Application No. 09/989,334	:	ON PETITION
Filed: November 20, 2001	:	
Attorney Docket No. P-9568-US	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 5, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the final Office action mailed July 1, 2004. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on October 2, 2004. A Notice of Abandonment was mailed February 9, 2005.

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

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

---

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

[2] See MPEP 711.03(c)(III)(C) and (D).

The above-identified application has been abandoned for an extended period of time. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.[3]

The instant petition lacks item (1). The Amendment submitted to the Examiner on March 5, 2007, failed to place the above-identified application in prima facie condition for allowance. A proper reply to a final rejection under 37 CFR 1.113 may be: (1) an amendment, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee); or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Petitioner must submit one of the above documents in order to revive the above-identified application.

The Advisory Action issued by the Examiner is enclosed.

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

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

By hand: Customer Window located at:

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

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

[3] 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).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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PEARL COHEN ZEDEK LATZER, LLP
1500 BROADWAY 12TH FLOOR
NEW YORK NY 10036

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AUG 03 2007
OFFICE OF PETITIONS

In re Application of	:	
Gill, Yoram	:	
Application No. 09/989,334	:	ON PETITION
Filed: November 20, 2001	:	
Attorney Docket No. P-9568-US	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed July 19, 2007, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 3700 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

23 JUL 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

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

#5

Kevin M. Kercher
Blackwell Sanders Peper Martin LLP
720 Olive Street, 24th Floor
St. Louis, MO 63101

In re Application of	:	
WILLIAM PLENDERLEITH	:	DECISION ON
U.S. Application No.: 09/989,351	:	PETITION
Filing Date: November 20, 2001	:	UNDER
Attorney's Docket No.: 717901.16	:	37 CFR 1.182
For: SPORTS VEHICLE	:	

This is in response to applicant's "Petition for Correction of National Phase Filing Status for a Patent Application Under 37 CFR Section 1.182" filed 14 February 2002. Applicant included the $130 petition fee.

BACKGROUND

On 22 May 2000, applicant filed an international application PCT/GB00/01926, which claimed priority of United Kingdom application no. 9911843.2 filed 22 May 1999.

On November 20, 2001, applicant filed a "UTILITY PATENT APPLICATION TRANSMITTAL" letter for filing of a new nonprovisional application under 37 CFR 1.53(b) in the United States, which was accompanied by, inter alia,: the filing fee, a specification, drawings, claims, abstract, preliminary amendment and an executed declaration.

On January 11, 2002, the applicant's attorney contacted the USPTO to ascertain why the Notice of Acceptance (PCT/DO/EO/903) was never received by the applicant. The examiner in charge of the application informed the attorney that the application was forwarded to the Office of the PCT Legal Administration. Subsequently, a Special Programs Examiner from the PCT Legal Administration Office called the attorney and verified that the instant application was accepted as a by-pass continuation patent application and not a national phase patent application filed under 37 CFR 371.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in

35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

> The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.
>
> * * *
>
> If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

The "UTILITY PATENT APPLICATION TRANSMITTAL" filed on November 20, 2001 indicated that the application was a filing of a new nonprovisional application under 37 CFR 1.53(b). The transmittal letter used by applicant is to be used only with submissions under 35 U.S.C. 111(a). Note that the letter has the statement "(Only for new nonprovisional applications under 37 CFR 1.53(b))". The filing under 37 CFR 1.53(b) is only directed to application filed under 35 U.S.C. 111(a). Applicant thus did not give specific instructions to enter the national stage. Therefore, the application was properly treated by OIPE as a filing under 35 U.S.C. 111(a). Even if there were other evidences to support the filing of this application as a national stage application, e.g. the preliminary amendment being addressed to Box PCT, the box for a continuing application information on the transmittal letter not being checked, etc., the transmittal letter would have been considered as conflicting instructions and the papers would have been rightfully considered as having been filed under 35 U.S.C. 111(a).

Consequently, the application is deemed to have been filed under 35 U.S.C. 111(a).

CONTINUATION APPLICATION

However, applicant is entitled to claim benefit under 35 U.S.C. 120 and 365© of the filing date of the international application for the common subject matter, since this application (Serial No. 09/989,351) and the international application (PCT/GB00/01926) designating the United States were copending on November 20, 2001. In order to obtain benefit of the earlier international application, applicant must amend the beginning of the specification of this application by inserting a proper reference to the parent international application. An appropriate passage would be, "This is an continuation of international application PCT/GB00/01926, filed May 22, 2000, which designated the United States and is now abandoned."

Applicant is reminded that in order to perfect the claim for priority under 35 U.S.C. 119, applicant <u>must</u> submit a certified copy of the priority document. The certified copy of priority

document submitted to the International Bureau cannot be relied upon to perfect the claim for priority. See MPEP § 1896.

CONCLUSION

For the reasons stated above, the petition for correction of national phase filing status for a patent application under 37 CFR 1.182 is **DISMISSED** without prejudice.

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

This application is being returned to the Technology Center 3600 for continued prosecution.

Harry C. Kim
PCT Special Program Examiner
Office of PCT Legal Administration

Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: (703) 308-2248
Facsimile: (703) 308-6459

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

Kevin M. Kercher
Blackwell Sanders Peper Martin LLP
720 Olive Street, 24th Floor
St. Louis, MO 63101

In re Application of	:	DECISION
WILLIAM PLENDERLEITH	:	ON
U.S. Application No.: 09/989,351	:	RENEWED
Filing Date: November 20, 2001	:	PETITION
Attorney's Docket No.: 717901.16	:	UNDER
For: SPORTS VEHICLE	:	37 CFR 1.182

This is in response to applicant's "Renewed Petition Under 37 CFR Section 1.182" filed 23 September 2002.

BACKGROUND

On 22 May 2000, applicant filed an international application PCT/GB00/01926, which claimed priority of United Kingdom application no. 9911843.2 filed 22 May 1999.

On 20 November 2001, applicant filed a "UTILITY PATENT APPLICATION TRANSMITTAL" letter for filing of a new nonprovisional application under 37 CFR 1.53(b) in the United States, which was accompanied by, inter alia,: the filing fee, a specification, drawings, claims, abstract, preliminary amendment and an executed declaration.

On 11 January 2002, the applicant's attorney contacted the USPTO to ascertain why the Notice of Acceptance (PCT/DO/EO/903) was never received by the applicant. The examiner in charge of the application informed the attorney that the application was forwarded to the Office of the PCT Legal Administration. Subsequently, a Special Programs Examiner from the PCT Legal Administration Office called the attorney and verified that the instant application was accepted as a by-pass continuation patent application and not a national phase patent application filed under 37 CFR 371.

On 14 February 2002, applicant filed "Petition for Correction of National Phase Filing Status for a Patent Application Under 37 CFR Section 1.182".

On 23 July 2002, the Office mailed "Decision on Petition Under 37 CFR 1.182" dismissing applicant's petition without prejudice.

On 23 September 2002, applicant filed the present renewed petition.

DISCUSSION

Applicant contends that the instant bypass application was clearly and unequivocally intended to be filed as a US national phase patent application. The applicant admits that a standard utility patent application transmittal letter was inadvertently utilized which resulted in the instant application being treated as a bypass application. However, the applicant argues that other evidence, i.e. filing of preliminary amendment addressed to Box PCT, clearly shows the applicant's intent of filing the instant application as a national phase filing.

As indicated in the prior petition decision mailed on 23 July 2002, any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

> The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.
>
> * * *
>
> If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

The "UTILITY PATENT APPLICATION TRANSMITTAL" filed on 20 November 2001 indicated that the application was a filing of a new nonprovisional application under 37 CFR 1.53(b). The transmittal letter used by applicant is to be used only with submissions under 35 U.S.C. 111(a). Note that the letter has the statement "(Only for new nonprovisional applications under 37 CFR 1.53(b))". The filing under 37 CFR 1.53(b) is only directed to application filed under 35 U.S.C. 111(a). Applicant thus did not give specific instructions to enter the national stage. Therefore, the application was properly treated by OIPE as a filing under 35 U.S.C. 111(a).

Even if there were other evidences to support the filing of this application as a national stage application, e.g. the preliminary amendment being addressed to Box PCT, the box for a continuing application information on the transmittal letter not being checked, etc., the transmittal letter would have been considered as conflicting instructions and the papers would have been rightfully considered as having been filed under 35 U.S.C. 111(a).

Consequently, the application is deemed to have been filed under 35 U.S.C. 111(a).

Further, the applicant argues that a bypass continuation application of a PCT application can not be filed with only a preliminary amendment. However, in the instant application, the applicant's preliminary amendment included a substitute specification which rendered the application complete. Consequently, since there was nothing to prevent the applicant from obtaining a filing date in the instant application, the application was correctly processed as a bypass continuation application.

As regards to double patenting, contrary to the applicant's argument, the applicant is not barred from filing two applications even if they are directed to the "same invention". Rather, the applicant is only prohibited from obtaining patents to "same invention".

As regards to the priority documents, although a certified copy of the priority document UK 9911843.2 is required, a certified copy of the PCT international application PCT/GB00/01926 is not required since it was published in English.

CONTINUATION APPLICATION

However, applicant is entitled to claim benefit under 35 U.S.C. 120 and 365(c) of the filing date of the international application for the common subject matter, since this application (Serial No. 09/989,351) and the international application (PCT/GB00/01926) designating the United States were copending on 20 November 2001. In order to obtain benefit of the earlier international application, applicant must amend the beginning of the specification of this application by inserting a proper reference to the parent international application. An appropriate passage would be, "This is a continuation of International Application PCT/GB00/01926, with an international filing date of May 22, 2000, published in English under PCT Article 21(2), and now abandoned."

As regards to the applicant's requirement for submission of the priority documents, a certified copy of the priority document UK 9911843.2 and a certified copy of the PCT international application PCT/GB00/01926 have been received in the instant application.

CONCLUSION

For the reasons stated above, the renewed petition under 37 CFR 1.182 is **DISMISSED** without prejudice.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P. O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being returned to the Technology Center 3600 for continued prosecution.

Harry C. Kim
PCT Special Program Examiner
Office of PCT Legal Administration

Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration

Telephone: (703) 308-2248
Facsimile: (703) 308-6459

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ALEXANDRIA, VA 22313-1450
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BLACKWELL SANDERS PEPER MARTIN LLP
720 OLIVE STREET
SUITE 2400
ST. LOUIS MO 63101

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OFFICE OF PETITIONS

Applicant: Plenderleith
Appl. No.: 09/989,351
Filing Date: November 20, 2001
Title: SPORTS VEHICLE
Attorney Docket No.: 717901.16
Pub. No.: US 2002/0030331 A1
Pub. Date: March 14, 2002

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on May 14, 2002.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication incorrectly includes deleted words bracketed throughout the application, which were deleted in the preliminary amendment and were shown in the marked-up copy that was submitted with the preliminary amendment.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1] The instant request does not identify a material mistake in the publication made by the Office:

The patent application publication does not include a mistake in the publication by the Office because patent application publications do not include preliminary amendments, according to 37 CFR 1.215(a), which says the following, in part:

> (a) ... The patent application publication will not include any amendments, including preliminary amendments, unless applicant supplies a copy of the application containing the amendment pursuant to paragraph (c) of this section.

§ 1.215(c) says the following:

> (c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended during examination, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the actual filing date of the application or fourteen months of the earliest filing date for which is sought under title 35, United States Code, whichever is later.

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[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The applicant did not supply a copy of the application in compliance with § 1.215(c). The Office correctly published the application in accordance with § 1.215(a).

In order to publish an application with "amendments" without submitting a copy of the application through the Electronic Filing System (EFS), applicant should file a new specification and corrected drawings, so long as no matter is included in the new specification and corrected drawings that would have been new matter in the prior application. Thus, the new specification and corrected drawings may include some or all of the amendments entered during the prosecution of the prior application(s), as well as additional amendments submitted for clarity or contextual purposes, and a new set of claims.[2] Applicant may want to additionally submit a marked-up copy of the application for the Examiner but an amendment to the specification is not filed, as the application is filed with the "amendments" included.

If the errors in the publication were Office errors, they would not have been considered material errors, as required by 37 CFR 1.221(b). The instant request identifies minor "errors" in the publication, as amendments to the specification are shown in the publication, as applicant filed the application with a preliminary amendment and a marked-up copy, which was used to create the patent application publication. These "errors" are not material mistakes because the technical disclosure and the claims are understandable. The errors do not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

The application is being forwarded to Technology Center 3618 to await further examination in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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[2]See Pre-Grant Publication Helpful Hint: File Continuation or Divisional Application with a New Specification and Copy of Oath or Declaration from Prior Application, 1251 Off. Gaz. Pat. Office Notices 54 (Oct. 9, 2001).

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Paper No.15

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

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OFFICE OF PETITIONS

In re Application of
Mark Auch et al
Application No. 09/989,362
Filed: November 20, 2001
Attorney Docket No. 12406-060US1/P2002,0611 U

: 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 October 20, 2003, 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/SG99/00143, filed December 17, 1999 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.

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[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must 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 November 20, 2001, and was pending at the time of filing of the instant petition. A reference to the prior-filed PCT 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 PCT application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed PCT 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 and 365(c). Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 and (365(c) to the prior-filed 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 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 application, accompanies this decision on petition.

The required fee for the above petition is $1,330 rather than the $130 submitted with the instant petition. Therefore, the remaining balance of $1,200 will be charged to deposit account no. 06-1050 as authorized.

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 2815 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 365(c) to prior-filed PCT Application No. PCT/SG99/00143, filed December 17, 1999, and to consider the amendment and the RCE submitted with the instant petition on October 20, 2003.

Karen Creasy

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

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DICKSTEIN SHAPIRO LLP
1825 EYE STREET, NW
WASHINGTON, DC 20006

Mail Date: 04/21/2010

Applicant	: Richard H. Lane	: DECISION ON REQUEST FOR
Patent Number	: 7629630	: RECALCULATION of PATENT
Issue Date	: 12/08/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/989,372	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/21/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **0** 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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BROWDY AND NEIMARK. P.L.L.C.
ATTORNEYS AT LAW
SUITE 300
624 NINTH STREET, N.W.
WASHINGTON DC 20001-5303

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OFFICE OF PETITIONS

In re Application of	:	
Morikawa et al.	:	
Application No. 09/989388	:	
Filing or 371(c) Date: 11/21/2001	:	
Attorney Docket Number:	:	
MORIKAWA4A	:	ON PETITION

This is a decision on the Request to Withdraw Holding of Abandonment, filed October 4, 2006. The Request is properly treated under 37 CFR 1.181. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the non-final Office action, mailed March 23, 2006. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No response having been received, the application became abandoned on June 24, 2006. A Notice of Abandonment was mailed September 27, 2006.

Applicant's Assertion

Applicant files the instant petition and asserts that a timely reply to the Office action, including an amendment and an extension of time request and fee, were filed on September 22, 2006. In support of this assertion applicant files a copy of the reply, along with a copy of his return-receipt postcard which acknowledges receipt by this Office of an amendment, extension of time and fee on September 22, 2006.

A review of Office records also reveals that the Office received an amendment and the fee for a three (3) month extension of time on September 22, 2006.

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

The application will be referred to Technology Center Art Unit 1643 for continued examination 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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SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVE NW
SUITE 800
WASHINGTON DC 20037-3213

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OFFICE OF PETITIONS

In re Patent No. 6,762,429 Masashi Aonuma Issue Date: July 13, 2004 Application No. 09/989,407 Filed: November 21, 2001 Attorney Docket No. Q66492	:	DECISION ON REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. 1.705

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154", filed August 23, 2004. Patentee requests that the patent term adjustment indicated on the patent be corrected from forty-two (42) days to one hundred twenty (120) days.

The request for reconsideration of the patent term adjustment indicated on the patent is **DISMISSED**. Patentee is given **thirty (30) days** to respond to this decision. No extensions of time will be granted under 37 C.F.R. § 1.136(a).

On July 13, 2004, the above-identified application matured into U.S. Patent No. 6,762,429. The instant request for reconsideration filed August 23, 2004 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 forty-two (42) days. Patentee states that the initial determination of patent term adjustment of one hundred twenty (120) days should not have been reduced to 42 days for the submission of prior art after the Notice of Allowance, as "a response to the examiner's reasons for allowance is an example of a paper that does not cause substantial interference and delay in the patent issue process." In other words, patentee argues that the submission of prior art after a Notice of Allowance is analogous to a response to an examiner's reasons for allowance.

Patentee's argument is not well-taken.

In view thereof, the correct determination of PTA at the time of issuance is **forty-two (42) days** (including 147 days of applicant delay).

Receipt of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged.

The patented file is being forwarded to Files Repository.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

Karin A. Ferriter for

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

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TOWNSEND & BANTA
601 PENN AVENUE, N.W.
SUITE 900, SOUTH BLDG
WASHINGTON, DC 20004

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OFFICE OF PETITIONS

In re Application of	:
Mariko EGAWA et al.	:
Application No. 09/989,459	: DECISION GRANTING PETITION
Filed: November 21, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. TOS-125-USA-D	:

This is a decision on the petition under 37 CFR 1.137(b), filed September 10, 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 of Non-Compliant Amendment mailed November 24, 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 December 25, 2003.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of September 10, 2004 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Betsy L. Deppe at (571) 272-6052 or in her absence, the undersigned at (571) 272-3217.

The application file is being referred to Technology Center Art Unit 1617 for appropriate action on the concurrently filed reply.

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

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Alexandria, Virginia 22313-1450
www.uspto.gov

Bainwood, Huang & Associates, LLC
2 Connector Road
Westborough, MA 01581

Mail Date: 04/21/2010

Applicant	: Todd D. Graham	: DECISION ON REQUEST FOR
Patent Number	: 7660902	: RECALCULATION of PATENT
Issue Date	: 02/09/2010	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/989,479	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/20/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **798** 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. 7

ROBERT E. KREBS, Esq.
BURNS, DOANE,
SWECKER & MATHIS, L.L.P.
P.O. BOX 1404
ALEXANDRIA, VA 22313-1404

COPY MAILED

JUN 05 2002

OFFICE OF PETITIONS

In re Application of:	
Peter Shing Fai Lam	
Application No. 09/989,529	
Filed: November 21, 2001	
For: MODIFICATION TO RECONFIGURABLE FUNCTIONAL UNIT IN A RECONFIGURABLE CHIP TO PERFORM LINEAR FEEDBACK SHIFT REGISTER FUNCTION	DECISION GRANTING STATUS UNDER 37 CFR 1.47(b)

This is a decision on the Request for Petition under 37 CFR 1.47(b), filed March 5, 2002, to allow the assignee to proceed with the application on behalf of and as agent for the inventor.

The petition is **granted**.

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.

Petitioner has demonstrated that the non-signing inventor refuses to sign the application. Specifically, Petitioner established that the nonsigning inventor, Peter Shing Fai Lam, refuses to sign the declaration after being sent a copy of the above-identified application and declaration.

As provided in Rule 1.47(b), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

Telephone inquiries regarding this communication should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014.

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

Mr. Peter Shing Fai Lam
3655 Pruneridge Avenue, #237
Santa Clara, CA 95051

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JUN 05 2002

OFFICE OF PETITIONS

In re Application of: :
Cristian Tabacutu :
Application No. 09/989,529 :
Filed: May 30, 2001 :
Attorney Dckt No. NC25779 : LETTER

Dear Mr. Lam:

You are named as inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 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 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.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Derek L. Woods at (703) 305-0014. 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).

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

cc: ROBERT E. KREBS, Esq.
BURNS, DOANE,
SWECKER & MATHIS, L.L.P.
P.O. BOX 1404
ALEXANDRIA, VA 22313-1404

UNITED STATES PATENT AND TRADEMARK OFFICE

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

EDWIN H. TAYLOR
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025

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JUL 15 2005

OFFICE OF PETITIONS

In re Application of :
Peter Shing Fai Lam :
Application No. 09/989,529 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. 032001-060 :

This is a decision on the petition, filed May 26, 2005, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

The application became abandoned for a failure to reply in a timely manner to the Office action under Ex parte Quale, 1935 Dec. Comm'r Pat. 11 (1935), mailed October 14, 2004, which set a shortened statutory period for reply of two (2) months. No extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on December 15, 2004. A Notice of Abandonment was mailed on May 6, 2005. In response, on May 26, 2005, 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 2193 for consideration of the amendment filed May 26, 2005.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RAYMOND R. MOSER, JR.
MOSER IP LAW GROUP
1040 BROAD STREET - 2ND FLOOR
SHREWSBURY, NJ 07702

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DEC 06 2007

OFFICE OF PETITIONS

#18

In re Patent No. 6,704,651 :
Issue Date: March 9, 2004 :
Application No. 09/989,558 :
Filed: November 20, 2001 :
Attorney Docket No. GLBL005D2 :

NOTICE

This is a notice regarding your request, filed May 16, 2007, for acceptance of a fee deficiency submission under 37 CFR 1.28.

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

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

This file is no longer entitled to small entity status. Accordingly, all future fees paid in this file must be paid at the large entity rate, absent further notification from a proper party of a change in status. *See* 37 CFR 1.27(c)(2).

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

Frances Hicks
Petitions Examiner
Office of Petitions

The opinion in support of the petition decision being entered today was not written for publication and is not binding precedent of the Board.

MAILED

JAN 31 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE

BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

JOSEPH C. SHER and DANIEL R. LOUGHMILLER

Appeal No. 2005-0826
Application No. 09/989,563

DECISION ON PETITION

This is a decision on the petition filed September 7, 2005 to reverse the decision denying the oral hearing or, alternatively, under 37 CFR § 1.183 to suspend or waive the requirement to timely file a request for an oral hearing in a separate paper under 37 CFR § 1.194(b).[1] This petition to reverse he decision denying the oral hearing will be treated as a petition under 37 CFR § 1.181 invoking the supervisory authority of the Director.

---

[1] The applicable rule is 37 CFR § 41.47(b) (2005), which recodified 37 CFR § 1.194(b) (2004) and became effective on September 13, 2004. 69 Fed. Reg. 49960 (Aug. 12, 2004), reprinted in 1286 Off. Gaz. Pat. & Tm Office 21 (Sept. 7, 2004).

Pursuant to 37 CFR § 1.181(g) and 37 CFR § 41.3, the Director has delegated authority to decide petitions under 37 CFR §§ 1.181 and 1.183 from actions of the Board of Patent Appeals and Interferences or of personnel at the Board of Patent Appeals and Interferences to the Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences. MPEP § 1002.02(f)(4)(b).

The petition under 37 CFR § 1.181 to reverse the decision denying the oral hearing is DENIED.

The petition under 37 CFR § 1.183 to suspend or waive the requirement of filing the request for oral hearing as a separate paper and grant the oral hearing is GRANTED.

FINDINGS

1. On June 5, 2003, Petitioner filed a Reply Brief. On the transmittal letter attached to the Reply Brief, Petitioner includes a list of papers submitted on that day as well as instructions, including a brief statement that states: "Appellants hereby request an oral hearing."

2. On August 24, 2004, the Board entered a "Notification of Non-Compliance Regarding Oral Hearing" stating on pages 1 and 2 that:

> The file record reflects that the appellants filed a Reply Brief with an amendment on June 5, 2003. On the transmittal sheet listing the various papers being submitted on that date, there was an inclusion that the appellants request an oral hearing in connection with the appeal. However, no separate paper requesting an oral hearing was found in the application file.
>
> Effective December 1, 1997, 37 CFR § 1 194(b) was amended to provide that a request for an oral hearing must be filed in a separate paper.

> Since the request for oral hearing was not filed in a separate paper as required by 37 CFR § 1 194(b), the appellants' request for an oral hearing cannot be granted. Thus, the previous notation of the Appeal being subject to an oral hearing is withdrawn.

3. On September 7, 2005, Petitioner filed the instant petition under 37 CFR § 1.181 to "reverse its decision that Appellants failed to satisfy 37 CFR § 1.194(b) and set an oral hearing date" (Petition, page 2) or alternatively, under 37 CFR § 1.183 to suspend or waive the requirement of filing the request for oral hearing as a separate paper and grant the oral hearing (Petition, paragraph bridging pages 2 and 3).

4. In support of petition under 37 CFR § 1.181, Petitioner argues that

> The rule does not exclude transmittal letters as separate papers. Rule 1.194 merely specifies that the request for oral hearing must be made in a separate paper from the briefing.
>
> Appellants made a good faith effort to satisfy this separate paper requirement. Appellants' transmittal letter ***is a*** separate paper pursuant to 37 C.F.R. § 1.194(b) and it requested an oral hearing ("Appellants hereby request an oral hearing"). Indeed, the Office accepted that transmittal letter as a separate paper requesting oral hearing on three different occasions and had even set an oral hearing date. There is no reason for the Office to stray from those previous decisions. Accordingly, the Office should reverse its decision that Appellants failed to satisfy 37 C.F.R. § 1.194(b) and set an oral hearing date (Petition, page 2).

5. In support of the petition under 37 CFR § 1.183, Petitioner argues that

> First, Appellants are prejudiced by the Office's denial of an oral hearing Appellants have spent a lot of time and resources on this Appeal. Had Appellants known that they would not be able to argue this Appeal at an oral hearing, then Appellants may not have pursued such an Appeal. Instead. Appellants would have proceeded differently.
>
> For example, in The Examiner's Answer, the Examiner withdrew its rejections of claims 22-24. Appellants decided to cancel these claims ("cancelled claims") from the appeal and to

pursue them in a continuation application. Had Appellants known that there would be no oral hearing regarding the remaining claims, Appellants might have accepted the cancelled claims in The Appeal and filed a continuation application to pursue the rejected claims at issue on Appeal. Because the Office lead Appellants to believe that an oral hearing would occur, Appellants tactically decided not pursue that route. Because Appellants cannot now change course wit respect to how they proceed with the claims, Appellants have been unjustly prejudiced by the Office's action.

Second, an oral hearing is necessary in this case to adequately respond to the Examiner's rejections. The claimed invention is complex and relates to intricate electrical circuits. Such circuitry is subject to the much-discussed "hindsight trap," in which the invention leads an examiner to use the applicant's own disclosure as a blueprint to defeat patentability by simply piecing together circuitry used in different settings from multiple references. However, because of the complexity of the circuitry at issue and its specific use, the Examiner incorrectly characterized the circuits disclosed in the prior art and further incorrectly combined those circuits. Similarly, the Examiner did not cite any specific motivation to combine these references, but rather relied on his own conclusory assertion of a motivation to combine. Though Appellants' briefs makes these points, Appellants' arguments could be easily misunderstood and dismissed on the papers. Thus. Appellants desire an oral hearing to specifically point out, on the circuit diagram level, the deficiencies in Examiners' assertions regarding the teachings of the prior art and any motivation to combine (Petition, page 3).

6. The pertinent portion of 37 CFR § 1.181 read as follows:

§ 1.181 Petition to the Director.
(a) Petition may be taken to the Director:

***

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Board of Patent Appeals and Interferences, see § 41.3 of this title.

7. 37 CFR § 1.183 reads as follows:

> § 1.183 Suspension of rules.
> In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, sua sponte, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in §1.17(f).

8. The pertinent portions of 37 CFR § 41.47 read as follow:

> § 41.47 Oral hearing.
> (a) An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.
>
> (b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

9. The pertinent portions of Section 1209 of the Manual of Patent Examining Procedure (MPEP) read as follows:

> § 1209 Oral Hearing
> 37 CFR 41.47(b) provides that an appellant who desires an oral hearing before the Board must request the hearing by filing, in a separate paper captioned "REQUEST FOR ORAL HEARING," a written request therefor, accompanied by the appropriate fee set forth in 37 CFR 41.20(b)(3), within 2 months after the date of the examiner's answer or supplemental examiner's answer. Form PTO/SB/32 may be used to request an oral hearing. This time period may only be extended by filing a request under either 37 CFR 1.136(b) or, if the appeal involves an *ex parte* reexamination proceeding, under 37 CFR 1.550(c).

> If the written request for an oral hearing is not filed in a separate paper captioned "REQUEST FOR ORAL HEARING," the request is improper and the appeal will be assigned for consideration and decision on the briefs without an oral hearing. Likewise, if the request is not timely filed or accompanied by the appropriate fee, the request is improper and the appeal will be assigned for consideration and decision on the briefs without an oral hearing...

DISCUSSION

Petition under 37 CFR § 1.181 to reverse decision denying oral hearing

Petitioner argues that 37 CFR § 1.194(b) does not exclude transmittal letters as separate papers and only specifies that the request for oral hearing must be made in a separate paper from the briefing (see Finding No. 4). However, 37 CFR § 41.47(b), which recodified 37 CFR § 1.194(b) and became effective on September 13, 2004 specifically requires a Request for an Oral Hearing be in the form of a separate paper captioned "REQUEST FOR ORAL HEARING" (see Finding No. 8). MPEP § 1209 offers further guidance on the format of a proper request for oral hearing by referring to Form PTO/SB/32 as illustrative of the proper format for a Requesting an Oral Hearing (see Finding No. 9). The transmittal sheet does not meet these requirements.

Accordingly, the petition under 37 CFR § 1.181 to reverse the decision denying the oral hearing is DENIED.

Petition under 37 CFR § 1.183 to Suspend or Waive the Separate Paper Requirement of 37 CFR § 41.47(b)

37 CFR § 1.183 provides that in an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee on petition of the interested party, subject to such other requirements as may be imposed (see Finding No. 6).

The requirement to file a request for oral hearing as a separate paper is provided for in 37 CFR § 41.47(b) (see Finding No. 8). As noted above, "[a]n oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation of the appeal" (see Finding No. 8). Thus, Petitioner presents two reasons to justify suspension or waiver of the separate paper requirement of 37 CFR § 41.47(b) (see Finding No. 5).

Petitioner first argues that Appellants are prejudiced by the Office's denial of an oral hearing Appellants have spent a lot of time and resources on this Appeal and that had they known that they would not be able to argue this Appeal at an oral hearing, then Appellants may not have pursued such an Appeal (id.). This argument is unpersuasive. Since an "appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing" (see Finding No. 8), it is not evident why Petitioner's decision to pursue an appeal would have hinged so strongly on the availability of an oral hearing.

Petitioner further argues that the oral hearing is necessary in this case to adequately respond to the Examiner's rejections (see Finding No. 5). Specifically, Petitioner states that the complexity of the invention, as it relates to intricate electrical circuits, may have been incorrectly characterized as disclosed in the prior art and further incorrectly combined (id.). In addition, Petitioner states that the Examiner's motivation to combine is based on his own conclusory assertion (id.). Thus, Petitioner desires the oral hearing to specifically point out, on the circuit diagram level, the deficiencies in Examiners' assertions regarding the teachings of the prior art and any motivation to combine (id.).

In the interest of justice, the petition under 37 CFR § 1.183 to suspend or waive the requirement to file the request for oral hearing as a separate paper and grant the oral hearing is GRANTED.

SUMMARY

The petition under 37 CFR § 1.181 to reverse the decision denying the oral hearing is DENIED.

The petition under 37 CFR § 1.183 to suspend or waive the requirement of filing the request for oral hearing as a separate paper and grant the oral hearing is GRANTED.

The application will be forwarded to the appropriate personnel for the scheduling of an oral hearing.

Michael Fleming
Chief Administrative Patent Judge
Board of Patent Appeals and Interferences

IRFAN A. LATEEF
KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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

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KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

In re Application of:
Joseph C. Sher et al.
Serial No.: 09/989,563
Filed: November 19, 2001
Attorney Docket No.: MICRON.113C1

DECISION *SUA SPONTE*
WITHDRAWING HOLDING
OF ABANDONMENT

This is a decision, *sua sponte*, withdrawing the holding of abandonment of the above-identified application.

A decision on appeal by the Board of Patent Appeals and Interferences (BPAI) was mailed on July 26, 2006, affirming all the final rejections made by the examiner and instituting a new ground of rejection under 35 USC 112, first paragraph, of all pending claims. A Notice of Abandonment was mailed on October 5, 2006.

Although no petition or request to withdraw the holding of abandonment in this application has been filed, the Notice of Abandonment is hereby vacated, the holding of abandonment withdrawn and the application restored to pending in view of the fact that the appellant has two months from the date of the BPAI decision to seek review of the decision by the court, to commence a civil action, or to take any appropriate action. The record indicates that a Request for Continued Examination (RCE) was filed on September 29, 2006, via a certificate of mailing under 37 CFR 1.8(a) dated September 26, 2006. The RCE was considered timely filed pursuant to the certificate of mailing procedure. The RCE was accompanied by an amendment to the claims and arguments. The application is not abandoned in fact. Inconvenience to the applicant is regretted.

The RCE will be processed and an Office action will be issued in due course.

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

Robert Oberleitner, Group Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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MAIL Paper No. 4

JUN 0 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Gregory W. Carr
Carr & Storm, L.L.P.
Suite 670
900 Jackson Street
Dallas, TX 75202

In re Application of: Kuntal Chowdhury et al.

Application No. 09/989,599
Filed: 11/20/2001
For:

ON ACCEPTANCE OF
DUPLICATE PAPERS

The USPTO experienced significant delays in the mail during the time period of October 13, 2001 through January 2, 2002, wherein the delays may have resulted in some applications appearing to be abandoned when they are actually pending and should be treated as pending because a timely reply (or communication) has been delayed in the mail.

Therefore, this is a decision on a request filed **May 16, 2002** to accept papers, which is being treated as a petition to show timely filing of a Request to Rescind a Previous Non-Publication Request and for withdrawal of abandonment.

The petition is **GRANTED**.

This application appeared to become abandoned for failure to file a timely Request to Rescind a Previous Non-Publication Request within the requisite 45 days of a foreign filing. That period lapsed without receipt of the original request to Rescind, rendering this application abandoned.

Petitioner alleges to have timely filed the Request to Rescind the Previous Non-Publication Request prior to foreign filing. To support this position, Petitioner has included with this petition (request) a copy of the originally filed Request to Rescind and the requisite statements. The correspondence included with the petition includes a certificate of mailing under 37 CFR 1.8(a).

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

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

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

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

The petition meets the requirements set forth above. Accordingly, there is no abandonment in fact.

The application has been forwarded to the Technology Center's technical support staff for generation of a corrected filing receipt to evidence the new projected publication, which is attached herewith. The file is being returned to the TC 2600 Central files to await action by the examiner in due course.

Vivian Chin, Supervisory Patent 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

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LOWRIE, LANDO & ANASTASI
RIVERFRONT OFFICE
ONE MAIN STREET, ELEVENTH FLOOR
CAMBRIDGE, MA 02142

MAY 16 2005

In re Application of Kevin Dowling et al.
Application No.: 09/989,677
Filed: November 20, 2001
For: **INFORMATION SYSTEMS**

WITHDRAWAL FROM ISSUE
37 CFR 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue due to unpatentability of one or more claims pursuant to 37 C.F.R. § 1.313.

The U.S. Patent and Trademark Office records reveal that the issue fee has not been paid. If the issue fee has been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Fee(s) Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Fee(s) Due. If the application is abandoned, applicant may request either a refund or a credit to a Deposit Account.

Any question regarding this communication should be directed to Minsun Harvey, Supervisory Patent Examiner, at (571) 272-1835.

The application is being returned to the examiner for taking appropriate action.

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

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OFFICE OF PETITIONS

FOLEY HOAG, LLP
PATENT GROUP, WORLD TRADE CENTER WEST
155 SEAPORT BLVD
BOSTON MA 02110

In re Application of	:
Dowling et al.	:
Application No. 09/989,677	: DECISION ON PETITIONS
Filed: November 20, 2001	: UNDER 37 CFR 1.78(a)(3) AND
Attorney Docket No. CKB-095.01	: UNDER 37 CFR 1.78(a)(6)

This is a decision on the petition filed January 9, 2006, which is being treated as a petition under 37 CFR §§1.78(a)(3) and 1.78 (a)(6), 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 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) and 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) and 1.78(a)(6) 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 instant nonprovisional application was pending at the time of filing of the reference to the prior-filed provisional applications as required by 37 CFR 1.78 (a)(5)(ii). Additionally the intermediate applications were filed within twelve months of the filing date of the prior-filed provisional applications, for which priority is claimed.

The petition complies with the requirements for a grantable petition under 37 CFR §§1.78(a)(3) and 1.78(a)(6) in that (1) a reference to the prior-filed applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been 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 119(e) to the prior-filed applications satisfies the conditions of 37 CFR §§1.78(a)(3) and 1.78(a)(6), 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) and (a)(6) 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) 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 instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to the examiner of Technology Center Art Unit 2828 for consideration of applicant's entitlement to claim benefit of priority under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed provisional applications.

Any inquiries concerning this decision may be directed to Charlema R. Grant at (571) 272-3215.

Frances Hicks
Petitions Examiner
Office of Petition

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
WASHINGTON, D.C. 20231
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Mailed: 2-7-07

In re application of	:	
Fukui et al.	:	
Serial No. 09/989,682	:	DECISION ON
Filed: November 20, 2001	:	PETITION
For: PACKAGING OF RESPIRING BIOLOGICAL	:	
MATERIALS	:	

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION, dated September 13, 2006.

On March 31, 2004 a Non-Final Office Action was mailed to Applicants. Applicant's filed two non-compliant Amendments on August 19, 2004 and December 2, 2004. On May 26, 2005 an Amendment was filed by Applicants. On October 4, 2005 a Requirement for Restriction was mailed to Applicants. On January 25, 2006 an Amendment was filed by Applicants. On June 16, 2006, a Final Office Action was mailed to Applicants. On September 14, 2006 an After Final Amendment along with the instant Petition and a Notice of Appeal was filed by Applicants.

Petitioner has argued that the finality of the last Office Action on June 16, 2006 is improper. Petitioner argues that the Examiner has not clarified what Applicant's Admission of the Prior Art was relied upon, thus no clear issue has been developed. Petitioner further argues that there is no rejection based on Shimizu as argued by Examiner in the Final Office Action, thus no clear issue has been developed. Petitioner also argues that not all the claim limitations have been addressed by the Examiner and Petitioner argues that the statement by Examiner that "The rejection is based on what the art taken as a whole teaches..." does not comply with the statute.

DECISION

Section 706.07(a) of the MPEP states:

706.07(a) Final Rejection, When Proper on Second Action

Due to the change in practice as affecting final rejections, older decisions on questions of prematureness of final rejection or admission of subsequent amendments do not necessarily reflect present practice.

Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Where information is submitted in an information disclosure statement during the period set forth in 37 CFR 1.97(c) with a fee, the examiner may use the information submitted, e.g., a printed publication or evidence of public use, and make the next Office action final whether or not the claims have been amended, provided that no other new ground of rejection which was not necessitated by amendment to the claims is introduced by the examiner. See MPEP § 609.04(b). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in a reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

Petitioner argues that the rejection under 35 USC 103 over Cummin in view of Applicant's Admission of the Prior Art (APA), further in view of Herdeman, Badran '542, Scolaro, Badran '544, De Moor, Anderson, Antoon, and Shimizu is unclear in that there is no statement of what the Examiner regards as having been admitted by the Application and what the alleged admission is relied upon to teach, thus no clear issue has been developed.

Petitioner argues that the Final Office Action includes a statement that the claims are also rejected employing Shimizu as the primary reference, however there is no rejection of the claims using Shimizu as the primary reference.

Petitioner argues that the Office Action does not address the feature of "the sealed polymeric bag containing the bananas has an oxygen permeability at 13°C per kg of bananas in the package (OP13/kg) of at least 700 ml/atm.24 hr" or to a number of other features present in dependent claims. Petitioner further argues that the rejection does not comply with the statute because it is based on what the art taken as a whole teaches.

Petitioners arguments are persuasive. The Finality of the Office Action filed on June 16, 2006 is withdrawn. The instant Application is being forwarded to the Examiner in order to clarify the issues of record as stated above.

Accordingly, the Petition for the withdrawal of finality is **GRANTED**.

Jacqueline M. Stone

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

SHELDON & MAK
SUITE 900
225 SOUTH LAKE AVENUE
PASADENA CA 91101

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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

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FEB 2 2 2007

OFFICE OF PETITIONS

In re Application of	:	
Luisa Iruela-Arispe et al	:	
Application No. 09/989,687	:	DECISION DISMISSING PETITIONS
Filed: November 21, 2001	:	UNDER 37 CFR 1.78(a)(3) AND (a)(6)
Attorney Docket No. PF453P3	:	

This is a decision on the petition treated under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed September 8, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of priority to the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment and Application Data Sheet (ADS).

The petition is **DISMISSED**

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000 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)(iii) and 1.78(a)(5)(i) and 1.78(a)(5)(iii) 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.

The petition does not comply with item (1). In this regard, the amendment and the Application Data Sheet do not set forth the same claim for benefit of priority. More specifically, the Application Data Sheet states that this application is a division of 09/255,794, which is a continuation-in-part of Application No. 09/005,874, which claims priority to 60/036,100, and that Application No. 09/005,874 is a continuation-in-part of PCT/US9617957. The amendment

does not set forth this same claim for benefit of priority. It is further noted that the above-noted applications do not have an inventor in common and is further unacceptable for this reason. Therefore, in view of the inconsistency in the claim for benefit of priority in the ADS and the amendment, the petition cannot be granted until this matter is corrected.

Accordingly, before the petition under 37 CFR 1.78(a)(3) and 1.78(a)(6) can be granted, a proper claim for benefit must be presented in compliance with 37 CFR 1.121 and must be accompanied by a renewed petition under 37 CFR 1.78(a)(3) and 1.78(a)(6).

The rules at 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) require 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. Since the statement appearing in the petition varies from the required language, the statement is being construed as the statement required by 37 CFR §§1.78(a)(3) and 1.78(a))(6). If this is not a correct reading of the statement appearing in the petition, petitioner should so state in the renewed petition.

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

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

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

By fax: (571) 273-8300
ATTN: Office of Petitions

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

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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Paper No. 6

Joseph W. Berenato, III
Liniak, Berenato, Longacre & White, LLC
6550 Rock Spring Drive, Ste. 240
Bethesda MD 20817

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JUL 23 2002

OFFICE OF PETITIONS

In re Application of	:	
Walter Best	:	
Application No. 09/989,719	:	ON PETITION
Deposited: November 21, 2001	:	
Attorney Docket No.: 16202.660	:	

This is a decision on the petition to accord filing date filed April 5, 2002, requesting that the above-identified application be accorded a filing date of November 21, 2001.

Application papers in the above-identified application were filed on November 21, 2001. However, on February 8, 2002, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application", notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings.[1]

In response, 5 sheets of drawings, including figures 1-9 and the present petition were filed on April 5, 2002. The petition contends that the application as filed included figures 1-9 and were described in the original filed specification. In support, the petition is accompanied by a copy of applicant's postcard receipt which acknowledges receipt in the office of "drawings (5 sheets)" on November 21, 2001.

Applicant's postcard receipt is prima facie[2] evidence that drawings were received on November 21, 2001, but no drawings are present in the file. Hence, it is clear that the papers for this application were mishandled by the Office. Therefore, it is concluded that 5 sheets of drawings, including figures 1-9, were received on November 21, 2001, as shown in counsel's file, and later misplaced in the Office.

The petition is Granted.

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[1] See 35 U.S.C. 111(a)(4)

[2] A postcard receipt which itemizes and properly identifies the items which are being filed serves as prima facie evidence of receipt in the office of all items listed thereon. See MPEP 503.

Since the original drawings cannot be located in the Office, the copy of the drawings supplied on April 5, 2002, will be used for processing and examination purposes.

No petition fee is due.

The application will then be returned to the Office of Initial Patent Examination for further processing with a **filing date of November 21, 2001**, using the 5 sheets of drawings supplied on April 5, 2002.

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

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Alexandria, VA. 22313-1450
WWW.USPTO.GOV

Paper No.

Daphne Reddy
HELLER EHRMAN WHITE & McAULIFFE LLP.
275 Middlefield Road
Menlo Park, California 94025-3506

Date: August 01, 2005
Application No. 09/989,724
Filing Date: November 20, 2001
Subject: PRO1312 Polypeptides

ON PETITION
37 CFR 1.48(b)

Receipt is acknowledged of the petitions filed April 19, 2005, under 37 CFR 1.48(b) for correction of inventorship. The petition has been **GRANTED**.

In view of the claim amendments during prosecution, fewer than all of the currently named inventors are the actual inventors of the invention being claimed in the present application. Accordingly, this application has been changed by deleting the names of the following inventors, who have not made an inventive contribution to the currently claimed subject matter: Avi Ashkenazi, Kevin Baker, David Botstein, Dan L. Eaton, Napoleone Ferrara, Sherman Fong, Hanspeter Gerber, Mary E. Gerristen, J. Christopher Grimaldi, Ivar J. Kljavin, Mary A. Napier, James Pan, Nicholas F. Paoni, Margaret Ann Roy, Timothy A. Stewart, Daniel Tumas, Colin K. Watanabe, P. Mickey Williams and Zemin Zhang. 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.

LARRY R. HELMS, PH.D.
SUPERVISORY PATENT EXAMINER

David Blanchard
United States Patent and Trademark Office
Patent Examiner
Art Unit 1642
Remsen 3B11
571-272-0827

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135 COMMONWEALTH DRIVE
MENLO PARK CA 94025

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AUG 06 2009

OFFICE OF PETITIONS

In re Patent No. 7,491,529	:	
Audrey Goddard et al.	:	DECISION DISMISSING
Application No. 09/989,734	:	REQUEST FOR
Issue Date: February 17, 2009	:	RECONSIDERATION OF
Filed: November 19, 2001	:	PATENT TERM ADJUSTMENT
Attorney Docket No.: 39780-2730	:	UNDER 37 CFR § 1.705(d)
P1C64	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed on April 17, 2009, requesting that the patent term adjustment determination for the above-identified patent be changed from four hundred and ninety-eight (498) to five hundred and ninety-nine (599) days.

The request for reconsideration of patent term adjustment is **DISMISSED**.

On February 17, 2009, the application matured into U.S. Patent No. 7,491,529, with a revised patent term adjustment of 498 days. On April 17, 2009, patentees timely submitted this request for reconsideration of patent term adjustment within two months of the issue date of the patent. Patentees request 101 days of additional patent term adjustment in accordance with the decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008). Patentees assert that pursuant to Wyeth, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentees maintain that the period of adjustment due to the Three Year Delay by the Office, pursuant to 37 CFR § 1.703(b),

of 101 days and the period of adjustment due to examination delay, pursuant to 37 CFR §1.702(a), of 773 days do not overlap as these periods do not occur on the same day. Accordingly, patentees request that the patent term adjustment of 498 days be recalculated as 773 + 101 - 0 (overlap) - 275 days of undisputed applicant delay = 599 days.

Pursuant to 35 U.S.C. 154(b)(1)(B), the term of a patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the date on which the application was filed. As acknowledged by patentees, this period does not include any time consumed by continued examination of the application requested by the applicant under section 132(b). Thus, the relevant period in considering this overlap ends with applicant's filing of the request for continued examination (RCE) pursuant to section 132(b). Further, the period for over three-year pendency does not include any period of adjustment which overlaps with the period of adjustment for Office delay accorded pursuant to 35 U.S.C. 154(b)(1)(A) and 37 CFR 1.702(a).

The Office agrees that the application was pending 3 years and 101 days after its filing date, as of the filing of the request for continued examination (RCE) on February 28, 2005. Moreover, as of the filing of the RCE, 429 days of adjustment for Office delay had been accorded pursuant to 35 U.S.C. 154(b)(1)(A) and §1.702(a)(1).[1] At issue is whether the period of adjustment of 101 days attributable to the Office taking in excess of three years to issue the patent overlaps with the adjustment of 429 days attributable to the Office's failure to issue a first Office action no later than fourteen months after the application filing date. The Office is of the position that the 101 days do overlap and thus, entry of an additional 101 days for over three-year pendency is not permitted. Accordingly, the Office calculated the patent term adjustment as 773 - 275 = 498 days.

This calculation of the patent term adjustment has been reconsidered and is affirmed. 35 U.S.C. 154(b)(2)(A) limits the adjustment of patent term, as follows:

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[1] The other 344 days of adjustment were accorded subsequent to the filing of the RCE and thus, are not considered in determining overlap with the 3 year period which ends with the filing of the RCE.

> to the extent that the periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

Likewise, 37 CFR 1.703(f) provides that:

> To the extent that periods of delay attributable to the grounds specified in §1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed.

As explained in *Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A)*, 69 Fed. Reg. 34283 (June 21, 2004), the Office interprets 35 U.S.C. 154(b)(2)(A) as permitting either patent term adjustment under 35 U.S.C. 154(b)(1)(A)(i)-(iv), or patent term adjustment under 35 U.S.C. 154(b)(1)(B), but not as permitting patent term adjustment under both 35 U.S.C. 154(b)(1)(A)(i)-(iv) and 154(b)(1)(B). Accordingly, the Office implements the overlap provision as follows:

> If an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See *Changes to Implement Patent Term Adjustment Under Twenty Year Term; Final Rule*, 65 Fed. Reg. 54366 (Sept. 18, 2000). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004), 1282 Off. Gaz. Pat. Office 100 (June 15, 2004). See also *Explanation of 37 CFR 1.703(f) and of the United States Patent and*

Trademark Office Interpretation of 35 U.S.C. 154(b)(2)(A), 69 Fed. Reg. 34283 (June 21, 2004).

The Office has consistently taken the position that if an application is entitled to an adjustment under the three-year pendency provision of 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending before the Office (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A). The period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames.

In this instance, there is an excluded period for the filing of a request for continued examination (RCE). Thus, the relevant period under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay "overlap" under 35 U.S.C. 154(b)(2)(A) is the period beginning on the date of filing of the application, November 19, 2001 and ending on the date of filing of the request for continued examination, February 28, 2005. 498 days of adjustment for Office delay were accorded prior to the filing of the RCE. The 101 days attributable to the delay in the issuance of the patent overlaps with the adjustment of 498 days attributable to grounds specified in §§ 1.702(a)(1). Entry of both periods is neither permitted nor warranted. The greater period of 498 days is considered the actual number of days the issuance of the patent was delayed, as of the filing of the RCE.

Accordingly, at issuance, the Office properly entered no additional days of patent term adjustment for the Office taking in excess of 3 years to issue the patent.

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 498 days (773 - 275).

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

Telephone inquiries specific to this matter should be directed to Paul Shanoski, Senior Attorney, at (571) 272-3225.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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

DANIEL M. DEVOS
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN
SEVENTH FLOOR
12400 WILSHIRE BOULEVARD
LOS ANGELES CA 90025-1026

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JAN 24 2007

OFFICE OF PETITIONS

In re Application of :
Alexander D. Peleg et al :
Application No. 09/989,736 : ON PETITION
Filed: November 19, 2001 :
Attorney Docket No. 42390P2445C3 :

This is a decision on the petition, filed January 23, 2007, which is being treated as a petition under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on October 4, 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 2193 will consider the request for continued examination under 37 CFR 1.114.

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).

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Paper No. 9

DEBRA J. FICKLER
12525 GRANDVIEW DRIVE
HUNTLEY IL 60142

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MAR 2 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Thomas Joseph Boyle	:	
Application No. 09/989,783	:	ON PETITION
Filed: 20 November, 2001	:	
Attorney Docket No. 05235.00002	:	

This is a decision on the petition requesting revival of the above-identified application, filed on 1 March, 2005, which, in the absence of the proper fee, is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment.[1]

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 described within, under 37 CFR 1.137(a) or (b). This is not a final agency action.

This application became abandoned on 14 April, 2003, for failure to timely reply to the non-final Office action mailed on 13 January, 2003, 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 24 September, 2003.

In the absence of the proper petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment.[2] The PTO

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[1] In the absence of the petition fee, which is required by law, the PTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

[2] See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.[3] While petitioner submitted $55.00 for the petition fee, effective 8 December, 2004, the fee for a petition under 37 CFR 1.137(a) (small entity) was $250.00. In order to receive consideration under 37 CFR 1.137(a), the balance due of $195.00 must be submitted.

Petitioner asserts that the non-final Office action mailed on 24 September, 2003, was never 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 applicant at the address of record. This presumption may be overcome by a showing that the Notice was not in fact received. The showing required to establish 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.[4] This showing may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail.

Petitioner asserts that the Office action mailed on 24 September, 2003, was not mailed to petitioner's current address. Specifically, petitioner asserts that a Change of Correspondence Address was filed with an Information Disclosure Statement on 20 February, 2002, but that the Change of Correspondence Address was never entered. A copy of the Change of Correspondence Address asserted to have been filed on 20 February, 2002, is included with the present petition. Petitioner further asserts that in other cases which had been transferred from Banner & Witcoff to the new correspondence address, the prior attorneys had forwarded copies of Office actions to petitioner at the current address.

A review of the official file reveals that an Information Disclosure Statement was filed on 20 February, 2002. However, no Change of Correspondence Address is located among the papers

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[3] MPEP 711.03(c); see 35 U.S.C. 41(a)(7).

[4] See Withdrawing the Holding of Abandonment When Office Actions Are Not Received; Notice 1156 Off. Gaz. Pat. Office 53 (November 16, 1993).

received on 20 February, 2002. Moreover, the copy of the Change of Correspondence Address supplied with the present petition reveals that no Certificate of Mailing or Transmission in accordance with 37 CFR 1.8 is included thereon. As such, there is no way to verify that a Change of Correspondence Address was in fact filed on 20 February, 2002, or on any date prior to the mailing of the non-final Office action mailed on 13 January, 2003.

With regard to petitioner's contention that the previous attorneys of record would forward correspondence to petitioner's counsel's current address, petitioner's must provide evidence that either (a) petitioner's was receiving mail at the correspondence address of record at the time the Notices were mailed or (b) petitioner notified the PTO of a change in the correspondence address prior to the mailing of the Notices.

MPEP 601.03 requires an attorney or agent of record to promptly notify the Patent and Trademark Office of a change in the correspondence address. The required notification need take no particular form, but must be provided in a manner calling attention to the fact that a change of address is being made. Petitioner failed to timely inform the Office of the address change. Failure by counsel to act properly cannot represent Office error and therefore cannot serve as a basis for withdrawal of the holding of abandonment.

In summary, a review of the record points to the conclusion that the Notice was not received due to petitioner's failure to inform the PTO of a change in the correspondence address. As such, withdrawal of the holding of abandonment is not proper. Specifically, no change of correspondence address was filed prior to the mailing of the non-final Office action mailed on 13 January, 2003. As such, the Office action was mailed to the proper address. As no reply was received, the application did become abandoned for failure to timely reply to the non-final Office action mailed on 13 January, 2003.

If petitioner has evidence showing that the change of correspondence address was filed on 20 February, 2002 (*i.e.*, an itemized postcard receipt stamped by the USPTO or a transmittal letter itemizing the filing of the Change of Correspondence Address bearing a timely certificate of mailing), petitioners may wish to file such evidence with a renewed petition.

REQUIRED REPLY

Petitioner has not submitted a reply to the Office action mailed on 13 January, 2003. In order for the application to be revived as described below, the required reply to the Notice must be submitted with any petition to revive. A courtesy copy of the Office action is sent as an attachment to this decision for assistance in preparing petitioner's reply.

ALTERNATE VENUE

Petitioner may wish to consider filing a renewed petition under 37 CFR 1.137(b), which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). 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 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)).

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).

A copy of the form for filing a petition under 37 CFR 1.137(b) to revive an application unintentionally abandoned is enclosed herewith for petitioner's convenience.

Receipt of the revocation and power of attorney and change of correspondence address filed with the present petition is acknowledged. While the correspondence address has been changed, according to Office Customer Number records, no practitioners are associated with Customer Number 32159. As such, no attorneys have been appointed in this application. Should petitioners wish to appoint a registered patent attorney, a new power of attorney listing the practitioner or a Customer Number with which the practitioner is associated must be filed.

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

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

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

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

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

D Wood

Douglas I. Wood
Senior Petitions Examiner
Office of Petitions

Enclosure: PTO/SB/64
Office Action mailed 31 January, 2003
Notice Regarding Change of Power of Attorney
Privacy Act Notification

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Jun-05

Paper No. 13

CALFEE, HALTER & GRISWOLD LLP
COURTNEY J. MILLER
21 EAST STATE STREET
SUITE 1100
COLUMBUS OH 43215

COPY MAILED

JUN 14 2005

OFFICE OF PETITIONS

In re Application of	:	
Thomas Joseph Boyle	:	
Application No. 09/989,783	:	ON PETITION
Filed: 20 November, 2001	:	
Atty Docket No. 30868/04000	:	

This is a decision on the petition filed on 20 May, 2005, under 37 CFR 1.137(b)[1], to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 14 April, 2003, for failure to timely reply to the non-final Office action mailed on 13 January, 2003, 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

[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)).

Abandonment was mailed on 24 September, 2003. The petition filed on 1 March, 2005, and treated as a petition under 37 CFR 1.181 was dismissed on 22 March, 2005.

Receipt of the revocation and power of attorney filed with the present petition is acknowledged.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.[2] In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

The application is being referred to Technology Center Art Unit 3752 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

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

[2] See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1208 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

International Business Machines Corporation
Intellectual Property Law - Mail 972E
1000 River Street
Essex Junctin, VT 05452

COPY MAILED
FEB 2 0 2004
OFFICE OF PETITIONS

In re Application of
Frederick W. Buehrer, et. al.
Application No. 09/989,822
Filed: November 20, 2001
Attorney Docket No. BUR920000188US

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed February 9, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed January 16, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight March 16, 2002.

In response to the Notice to File Corrected Application Papers, petitioner submitted with the instant petition $1,330 for the petition to revive fee, and a specification correcting the format in the claims.

Since the requirements for a grantable petition have been met, the petition is **GRANTED**.

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

GEORGE O. SAILE & ASSOCIATES
28 DAVIS AVENUE
POUGHKEEPSIE, NY 12603

COPY MAILED

JUL 2 6 2004

OFFICE OF PETITIONS

In re Application of Tsai et al. Application No. 09/989,837 Filed: November 20, 2001 Attorney Docket No. TS01-071	: : : : :	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 11, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on February 5, 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 November 4, 2004 accompanies this decision on petition.

This application is being forwarded to Technology Center AU 2814 to await a reply to the outstanding non-final Office action mailed May 11, 2004. Failure to timely reply will again result in the abandonment of the application.

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

Liana Chase

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

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

KATTEN MUCHIN ZAVIS ROSENMAN
575 MADISON AVENUE
NEW YORK, NY 10022-2585

COPY MAILED
SEP 3 0 2003
OFFICE OF PETITIONS

In re Application of :
Yoshinori Nakamura et al :
Application No. 09/989,858 : ON PETITION
Filed: November 16, 2001 :
Attorney Docket No. FUJS 14.330A :

This is a decision on the petition filed August 7, 2003, under 37 CFR 1.10, which is being treated as a petition under 37 CFR 1.181 requesting that papers filed in response to the Notice to File Corrected Application Papers (hereafter Notice) be accorded a filing date of February 19, 2002.

A review of the file record discloses that a Notice was mailed on January 29, 2002 (filing date granted) requiring the submission of substitute drawings and an additional claims fee of $252, which set a period for reply thereto of two months.[1]

Applicants state that substitute drawings required by the Notice were in fact filed in the USPTO on February 19, 2002. In support thereof, applicants' have submitted a copy of a return stamped post card which acknowledges receipt of forty-six (46) sheets of drawings (in the USPTO) on February 19, 2002, for the instant application. The drawings have not been located among the application papers in the instant file, possibly due to applicants' placement of the wrong application number in the caption of the transmittal letter.

However, MPEP 503 states that "A post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO."

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[1] It appears that the requirement for the $252 balance due for the additional claims fee was in error since the transmittal submitted with the instant application authorized the charging of any additional fees due. The record for this application shows that this fee was in fact deducted from applicants' deposit account on February 8, 2002 (and given a mail room date of November 16, 2001, the date of filing of the instant application).

Further, under Office procedure, a reply that has an incorrect application number is handled in accordance with MPEP 508.03. In this regard, if a paper having an incorrect application number contains sufficient information to identify the correct application and was timely filed, the papers will be accepted as having been submitted on the date evidenced as having been received in the USPTO. In reviewing the papers submitted, it is concluded that the information contained thereon was sufficient to associate the papers with the instant file.

In view of the above, the petition under 37 CFR 1.181 is **granted**. The copy of the forty-six (46) sheets of drawings containing Figures 1-48, submitted with the petition on August 7, 2003, will be accepted in place of the drawings acknowledged as having been received for the instant application on February 19, 2002 and will be used for examination purposes.

This application is being forwarded to the Office of Initial Patent Examination Division for further processing and an indication that forty-six (46) sheets of drawings in reply to the Notice of January 29, 2002 were filed on February 19, 2002.

Telephone inquiries specific to this decision on petition should 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

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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ROSENMAN & COLIN LLP
575 MADISON AVENUE
NEW YORK NY 10022-2585

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MAY 2 2 2006
OFFICE OF PETITIONS

In re Application of
Yoshitoshi Kurose et al. :
Application No. 09/989,866 : ON PETITION
Filed: November 19, 2001 :
Attorney Docket No. FUJO19.189 :

This is a decision on the petition under 37 CFR 1.137(b),[1] filed February 7, 2006, to revive the above identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the Final Office Action mailed July 21, 2005. A shortened statutory period of three months was set for replying Final Office Action. No extensions of time having been filed, the application became abandoned October 24, 2005. The instant petition and this decision precede the mailing of the Notice of Abandonment.

In response to the Final Office Action mailed July 21, 2005, petitioner has submitted a

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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)).

Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

This matter is being referred to Technology Center 2154 for processing of the RCE and submission.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : Mar. 15, 2006

TO SPE OF : ART UNIT 1742 (Roy King)

SUBJECT : Request for Certificate of Correction on Patent No.: 6,787,019

A response is requested with respect to the accompanying request for a certificate of correction. This response is for an IFW application, **please send this form with your decision - to be scanned into the IFW contents as DOC CODE: COCX**.

then return a message in MADRAS to Team: PUBSCofC, User: employee (named below). Please complete this form and have it scanned, within **7** days.

With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.
Please see the claims. Your denial or approval decision is needed below.

sp STACY POWELL

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 x120

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

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

Comments:

Claim 4 of patent depends on claim 3 of patent, Claim 12 of patent corresponds to claim 5 in Application which correctly depended on claim 1.

Roy King — **SPE**

1742 — **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. 6

MAIL

JUN 13 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OPPENHEIMER WOLFF & DONNELLY
P. O. BOX 10356
PALO ALTO CA 94303

In re Application of :
BUNTON, WILLIAM P. :
Application No. 09/989,897 :
Filed: November 19, 2001 :
For: TIME-DIVISION AND WAVE-DIVISION MULTIPLEXED LINK FOR USE IN A SERVICE AREA NETWORK :

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the request to withdraw as attorney/agent of record filed on 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 attorneys of record including those associated with Customer No. 25,696 are granted the request for withdraw of attorney/agent.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: 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
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
P.O. BOX 7037
ATLANTA, GA 30357-0037

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APR 20 2005

OFFICE OF PETITIONS

In re Application of :
Laurence Lai et al :
Application No. 09/989,898 :
Filed: November 19, 2001 :
Attorney Docket No. 11157.00

ON PETITION

This is a decision on the petition, filed April 14, 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 February 8, 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 Irvin Dingle at (571) 272-3210.

This matter will be forwarded to Technology Center AU 1765 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 17

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

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OCT 2 4 2003

OFFICE OF PETITIONS

In re Application of
Emad S. Alnemri et al
Application No. 09/989,903
Filed: November 20, 2001
Attorney Docket No. 480140.434D1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 2, 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 March 3, 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 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 $950 extension of time submitted with the petition on October 2, 2003 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 Irvin Dingle at (703) 306-5684.

The application file is being forwarded to Technology Center AU 1642 for further processing.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
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Paper No. 6

MAIL

AUG 0 4 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

OPPENHEIMER WOLFF & DONNELLY
P. O. BOX 10356
PALO ALTO CA 94303

In re Application of	:	
BUNTON, WILLIAM P.	:	
Application No. 09/989,911	:	DECISION ON REQUEST TO
Filed: November 19, 2001	:	WITHDRAW AS ATTORNEY
For: TIME-DIVISION MULTIPLEXED LINK	:	
FOR USE IN A SERVICE AREA NETWORK	:	

This is a decision on the request to withdraw as attorney/agent of record filed on 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 attorneys/agents are granted the request for withdraw including those of Customer Number 25,696.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Kenneth A. Wieder

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

cc: HEWLETT-PACKARD COMPANY
INTELLECTUAL PROPERTY ADMINISTRATION
PO BOX 272400
FORT COLLINS, CO 80527-2400
ATTN: BILL STREETER

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Mailed: SEP 21 2004

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Paper Number __

In re application of
Buckley
Serial No. 09/989,913
Filed: November 20, 2001
For: PHASE CHANGE MATERIAL THERMAL CAPACITOR CLOTHING

DECISION ON PETITION

This is a decision on a FIRST PETITION TO EXPUNGE UNDER 37 C.F.R. 1.59(b), filed April 16, 2004, and a SECOND PETITION UNDER 37 C.F.R. 1.59(b) filed April 16, 2004. Both petitions are before the Group Director of Technology Center 1700 for consideration.

DECISION

Petitioner requests that the Proprietary Information Disclosure Statement (PIDS) filed March 25, 2004 be expunged and that the three documents filed on April 9, 2004 be appropriately disposed of in accordance with 37 CFR 1.59. Each of the criteria for granting the request has been satisfied, see the MPEP 724.05.

The petition is **GRANTED.**

Section 1.59 has been amended to eliminate references to returning documents that have been expunged to recognize that, with electronic Official files, there will be nothing to return when a paper is expunged.

The Office is capturing electronic images of all documents that form the Official file. Where the image is generated from a physical source document, the originating document may be disposed of once the electronic image accuracy is verified. The paper source document will eventually be destroyed under a United States National Archives and Records Administration (NARA) approved schedule. Therefore, if a document is to be expunged from the record, the only operation that will be required will be removal of the image from the Official file.

Paragraph (a)(1) of §1.59 has been amended by deleting the phrase "and returned " from the first sentence, and deleting the second sentence. Paragraph (b) of §1.59 has been amended by deleting the phrase "and return " from each of the first and second sentences. The Office will continue to provide notice in the Official file that a paper has been expunged and the Office will send a decision to the applicant notifying the applicant that the paper has been expunged.

09/989,913

The images of the documents and the PIDS have been removed from the Official file.

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

Leon Radomsky
Foley & Lardner LLP
Suite 500
3000 K Street NW
Washington, DC 20007

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 10

Lorraine B. Ling
Senior Patent Counsel
Legal Division
Pfizer Inc.
150 East 42nd Street, 150/5/49
New York, NY 10017-5612

COPY MAILED

JAN 2 8 2004

OFFICE OF PETITIONS

In re Application of	:	
Cao et al.	:	
Application No. 09/989,933	:	ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No. 3153.00461/PC11050A	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 7, 2004, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers mailed December 18, 2001, which set a shortened statutory period for reply of (2) Months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the application became abandoned on February 19, 2002.

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 $2010 extension of time submitted with the petition on January 7, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

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

Latrice Bond

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

#9

OIPE JC95
JAN 0 7 2004
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Cao, et al.
Serial No: 09/989,933
Filed: 11/21/01
For: ATTENUATED FORMS OF BOVINE VIRAL DIARRHEA VIRUS
Attorney Docket No: 3153.00461

RESPONSE TO NOTICE TO FILE CORRECTED APPLICATION PAPERS

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

Dear Sir:

Applicants hereby Petition for an Extension of Time to Respond to the Outstanding Action for five (5) months.

Enclosed herewith are the following:

1. Copy of Notice to File Corrected Application Papers;
2. Associate Power of Attorney;
3. Substitute drawings in compliance with 37 CFR 1.84(g); and
4. Our check in the amount of $2,010.00 in payment of the required request for extension of time to respond fee.

Please charge our Deposit Account No. 11-1449 for any additional fees or credit our account for any overpayment.

Respectfully submitted,

KOHN & ASSOCIATES, PLLC

Kenneth I. Kohn
Registration No. 30,955
30500 Northwestern Hwy.
Suite 410
Farmington Hills, Michigan 48334
(248) 539-5050

Regin. Rev: 01/28/2004 AKELLEY 0008020000
DAN:111449 Name/Number:09989933
FC: 9204 $2010.00 CR

Dated: January 7, 2004

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail and addressed to: the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450; MAIL STOP MISSING PARTS on January 7, 2004.

Marie M. DeWitt

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01/09/2004 AWONDAF1 00000027 09989933
02 FC:1255 2010.00 OP

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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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/989,933	11/21/2001	Xuemei Cao	PC11050A

CONFIRMATION NO. 1576
FORMALITIES LETTER
OC000000007206773

23913
PFIZER INC
150 EAST 42ND STREET
5TH FLOOR - STOP 49
NEW YORK, NY 10017-5612

Date Mailed: 12/18/2001

NOTICE TO FILE CORRECTED APPLICATION PAPERS

Filing Date Granted

This application has been accorded an Application Number and Filing Date. The application, however, is informal since it does not comply with the regulations for the reason(s) indicated below. Applicant is given **TWO MONTHS** from the date of this Notice within which to correct the informalities indicated below. 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 required item(s) identified below must be timely submitted to avoid abandonment:

- Substitute drawings in compliance with 37 CFR 1.84 because:
  - drawing sheets do not have the appropriate margin(s) (see 37 CFR 1.84(g)). Each sheet must include a top margin of at least 2.5 cm. (1 inch), a left side margin of at least 2.5 cm. (1 inch), a right side margin of at least 1.5 cm. (5/8 inch), and a bottom margin of at least 1.0 cm. (3/8 inch);

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

Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 3 - OFFICE COPY

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#8

OIPE JC93
JAN 0 7 2004
PATENT & TRADEMARK OFFICE

Associate Power Of Attorney Or Agent (37 CFR 1.34) (For Representation Related To A Patent Application)	Docket No. 3153.00461/PC11050A

In Re Application Of:
Cao, et al.

Serial No.	Filing Date	Examiner	Group Art Unit
09/989,933	11/21/01		

Invention:
ATTENUATED FORMS OF BOVINE VIRAL DIARRHEA VIRUS

TO THE COMMISSIONER FOR PATENTS:

Please recognize the following as [X] Associate Attorney [ ] Associate Agent in this application

Name: **Kenneth I. Kohn**

Reg. No.: **30,955**

Address: **Kohn & Associates**
30500 Northwestern Hwy.
Suite 410
Farmington Hills, Michigan 48334
United States of America

Tel. No. **248-539-5050**

Lorraine B. Ling

Signature of Principal Attorney of Record

Dated: **December 17, 2003**

Lorraine B. Ling, 35,251
Senior Patent Counsel
Legal Division
Pfizer Inc.
150 East 42nd Street 150/5/49
New York, NY 10017-5612
212-573-2030

Registration Number & Address of Principal Attorney or Agent

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on 1-7-04 and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Marie M. DeWitt

RECEIVED
JAN 0 9 2004
OFFICE OF PETITIONS

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 1/27/04 | 2 Serial/Patent # 09/989,933

3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
X	Extension of Time			$ 2010.
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND $

8 TO BE REFUNDED BY:

	Treasury Check
	Credit Deposit A/C #:

9 11--1449

10 REASON:

	Overpayment
	Duplicate Payment
	No Fee Due (Explanation):

Extension filed after six-month statutory period for reply.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: _____ TITLE: Para Spec

SIGNATURE: Patrice Bond PHONE: 308-6911

OFFICE: Office of Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: Alicia Hill DATE: 1/28/04

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

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

FORM PTO 1577
(01/90)

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Paper No.

JENKINS, WILSON, TAYLOR &
HUNT, P. A.
3100 TOWER BLVD
SUITE 1200
DURHAM NC 27707

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JAN 0 5 2007

OFFICE OF PETITIONS

In re Application of	:	
Injong Rhee	:	DECISION ON PETITION
Application No. 09/989,957	:	
Filed: November 21, 2001	:	
Atty Docket No. 297/123/2	:	

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 C.F.R. §1.181(a) AND M.P.E.P. § 711.03(c)" filed October 23, 2006.

The above-identified application became abandoned for failure to timely pay the issue fee and publication fee within the three-month statutory period set in the Notice of Allowance and Fee(s) Due mailed April 26, 2006. The period for transmitting the issue fee is not extendable. No reply having been received, the above-identified application became abandoned on July 27, 2006. A courtesy Notice of Abandonment was mailed on October 3, 2006.

Applicant asserts that on June 23, 2006, they filed a Request for Continued Examination (RCE) and an Information Disclosure Statement (IDS). In support thereof, applicants submitted copies of the Express Mail mailing label utilized, their return postcard listing the contents of the June 23, 2006 filing, the RCE, the IDS and the documents cited in the IDS.

A postcard receipt, which itemizes and properly identifies the items, which are being filed, serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date

stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on June 23, 2006; 2) it specifically identifies the items being filed, including "Request for Continued Examination (RCE) Transmittal" and "Information Disclosure Statement (IDS)" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. The evidence shows that an RCE and submission were submitted prior to the due date for the Issue Fee and Publication Fee.

Accordingly, the Notice of Abandonment mailed October 3, 2006 is hereby **VACATED** and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 2616 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment, for processing of the RCE and IDS re-supplied on petition filed October 23, 2006 and thereafter, for consideration by the examiner of the RCE and IDS re-supplied on petition filed October 23, 2006.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

APR 15 2005

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

ROBINS & PASTERNAK LLP
1731 Embarcadero Road, Suite 230
Palo Alto CA 94303

In re Application of
Q. Liu et al
Serial No. : 09/989,994
Filed : November 20, 2001
Attorney Dkt No. : 8325-0011.20

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.144 & 1.181, filed on 22 July 2004, to request review and withdrawal of the final restriction requirement. The delay in acting on this petition was due, in part, to the filing of the petition decision within the body of a response to an Office action, which delayed routing of the petition to the deciding official. Petitions should be filed as separate correspondence.

BACKGROUND

A review of the file history shows that the application was filed on November 20, 2001 with 49 claims.

On December 22, 2003, the Office required the restriction of the 49 claims to one of greater then 90 different inventions under 35 U.S.C. 121. The greater then 90 different inventions were divided into two groups, half of the inventions were drawn to specific zinc-finger polypeptides comprising a first (F1), a second (F2) and a third (F3) zinc finger, class 530, subclass 300, and half of the inventions were drawn to a specific polynucleotide encoding a zinc-finger polypeptides comprising a first (F1), a second (F2) and a third (F3) zinc finger class 536, subclass 23.1. Applicants were instructed to choose either a polypeptide group or a polynucleotide group and choose one sequence for F1, one sequence for F2, and one sequence for F3 from the table listed on page 2 of the restriction requirement or one polynucleotide sequence which encodes the peptide sequence of F1, F2, and F3. The table on page 2 of the restriction requirement lists the sequences recited in claim 1. It was further pointed out to applicant that it would be understood that all three F1, F2, and F3 sequences or their encoding polynucleotides will be found or occur in the same polypeptide or polynucleotide.

On January 26, 2004, applicants elected with traverse a polypeptide comprising the combination of DRSNLTR for F1; TSGHLSR for F2; and RSDHLSR for F3.

On March 18, 2004, the examiner prepared a first action on the merits which acknowledged the election with traverse of a zinc finger protein comprising F1 sequence DRSNLTR, F2 sequence TSGHLSR and F3 sequence RSDHLSR. The examiner found

the traversal non-persuasive and further rejected those claims drawn to the elected subject matter under 35 U.S.C. 112 first and second paragraphs, 35 U.S.C. 102 and double patenting.

On July 22, 2004, in response to the first office action on the merits, applicants filed the instant petition requesting review and withdrawal of the final restriction requirement. Within the same paper, applicants submitted their response to the Office action. It is noted that petitions should be submitted as a separate paper and should not be combined with other correspondence.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.144 & 1.181, to request review and withdrawal of the final restriction requirement has been considered.

Applicants describe their invention as the discovery of the position dependence of zinc finger sequences, however, the claims are not directed to a method of discovery, methods of production or even to the set of zinc finger trimers proteins so discovered. The claims are directed to individual zinc finger trimers and reads upon proteins which may have been produced via applicant's approach or produced by other techniques. For product claims, it is the structure and function of the product, not the method by which the product was produced (or discovered) that imparts patentability.

Applicants submit that the restriction requirement is unclear because it states that there are 45 amino acid sequences claimed, when only 43 are claimed. Applicants are correct that 43 and not 45 possible combinations of F1, F2 and F3 recited in claim 1.

Applicants further submit that the restriction requirement was unclear by requiring election of one of fifteen groups. Applicants note the ramifications of such a restriction requirement on this and related applications with respect to double patenting issues and argue that such a requirement would prevent applicants from claiming their invention. This argument is not persuasive for three reasons.

(1) Nowhere does the previous restriction requirement require that applicants elect one of fifteen groups. There is no mention of the number fifteen in the restriction requirement. The only fifteen that can be found in referenced communications is that reference made by applicants in their argument. The table listed on page 2 of the restriction requirement reflects the sequences in claim 1 and has fifteen rows corresponding to fifteen different target sites which are combined in groups of three for 45 (or, leaving out two, 43) inventions.

(2) Moreover, in the election and traversal, applicants did not argue that only 15 groups were set forth in the restriction requirement.

(3) In fact, applicants must have comprehended what was required because they elected a trimer of zinc finger proteins outside of the alleged 15 groups, in which each zinc finger protein binds to the three different codons GAC, GGT and GGG. For these reasons, the original restriction requirement is considered to be clear and complete.

Turning now to the argument that the restriction should have been an election of species per 803.02, MPEP 803.02 states:

> If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require restriction. Since the decisions in In re Weber, 580 F.2d 455, 198 USPQ 328 (CCPA 1978) and In re Haas, 580 F.2d 461, 198 USPQ 334 (CCPA 1978), it is improper for the Office to refuse to examine that which applicants regard as their invention, unless the subject matter in a claim lacks unity of invention. In re Harnish, 631 F.2d 716, 206 USPQ 300 (CCPA 1980); and Ex parte Hozumi, 3 USPQ2d 1059 (Bd. Pat. App. & Int. 1984). Broadly, unity of invention exists where compounds included within a Markush group (1) share a common utility, and (2) share a substantial structural feature disclosed as being essential to that utility.

Applicants submit that all of the claimed proteins share the common utility of sequence-specific DNA-binding and that each of these proteins possess a substantial structural feature, namely a set of three zinc fingers, that is disclosed as being essential to that utility. Applicants' complete argument is acknowledged, however, found non-persuasive on the basis that the utility of the claimed proteins is not that they bind to DNA in a sequence-specific manner, but rather that they bind to a specific sequence of DNA, such as "GACGGTGGG", as elected by applicants. The substantial structural feature disclosed as being essential to that utility is the specific amino acid sequence of the claimed zinc finger polypeptides. This substantial structural feature which is essential to the specific utility of each of the specific zinc finger proteins is specific to each specific utility or sequence and not shared by the other zinc finger proteins listed in the claim. The zinc finger trimers cannot be substituted one for another to achieve the same effect. Thus, as the zinc finger proteins recited in claim 1 of the instant application do not share a common utility nor do they share any substantial structural feature, let alone any substantial feature disclosed as being essential to that utility, it is thus proper for the Office to set forth a restriction requirement within a claim. For these reasons, the proteins recited in the alternative in claim 1 do not qualify for Markush-type election of species practice per 803.02.

Even if one was to concede that the zinc finger proteins included within claim 1 were a proper Markush group, sharing a common utility, and sharing a substantial structural feature, disclosed as being essential to that utility, claim 1 includes approximately 15^3 different zinc finger proteins, a number of which is not sufficiently few in number or so closely related that a search of the entire claim could be made without serious burden.

Claim 1 does not recite a groups of compounds having "unity of invention." Claim 1 recites proteins listed in the alternative. Claim 1 could be written as a series of dependent claims that capture the full scope of the claim, without loss or overlap of

scope. No linking claims exist. Thus restriction between the zinc finger proteins listed in claim 1 is proper.

Applicants traverse the restriction requirement on the basis that its maintenance would present undue burdens to both applicants and the office, it would require the filing of either 29 or 89 additional applications. This is not persuasive on the basis that the number of patent applications required to cover applicants claimed number of different independent and distinct inventions is not pertinent to the propriety of a restriction requirement.

Applicants further argue that restriction between proteins and nucleic acids is supported by throwaway utilities not based on sound reasoning applicable to the facts of the currently pending case. Applicants submit that the Examiner's assertions that the protein could be made by a materially different process (synthesis or purification from a natural source) and that the polynucleotide encoding a non-naturally occurring protein could not serve as a hybridization probe.

Applicants' complete argument regarding the restriction requirement between the proteins and polynucleotides is acknowledged but deemed to be not persuasive in view of the following reasons. Applicants correctly note that a restriction requirement may have ramifications on this and related applications with respect to double patenting issues.

Applicants' attention is directed to allowed application number 10/006,069, commonly assigned to the same assignee as with the instant application and also by the inventor Qiang Liu. Application number 10/006,069 contains allowed claim 99 which is directed to a purified nucleic acid encoding a polypeptide comprising a zinc finger protein that comprises SEQ ID Nos 55, 247 and 68. It is noted that SEQ ID Nos 55, 247 and 68 of 10/006,069 are identical to the elected sequences DRSNLTR TSGHLSR and RSDHLSR of 09/989,994. It is noted that the restriction requirements in both applications are comparable with respect to separation of the nucleic acid and protein inventions.

Because the allowed claims in the above referenced co-assigned application are to the purified nucleic acid encoding the elected zinc finger protein, now pending in the instant application, the rejoining of nucleic acid claims to the elected polypeptide group would conflict with the restriction requirement set forth in 10/006,069, which also separates the nucleic acid and protein inventions and which applicants have accepted without petition. The Office will not issue two patents containing claims to the same invention. Moreover, the Office cannot make a double patenting rejection among inventions which were claimed in separate applications as a result of a restriction requirement.

37 CFR 1.78 states:

(b) Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

It appears that the requests made in this petition are counter to the requirement of 37 CFR 1.78(b). Had the petition been granted, it would result in the same invention being claimed in two applications without a possibility of the Office addressing the double patenting issues. The burden is upon applicant to maintain a clear line of distinction between inventions in different applications. Thus maintenance of the restriction requirement between proteins and nucleic acids in this particular application, is proper and consistent in view of the restriction requirement set forth and accepted in the related application.

Finally, applicants assert that their election was improper because the restriction requirement did not provide the choice of RSDNLAR, RSDNLAR and RSDNLTR. This is not correct. The sequences now being proposed are found in table on page 2 of the restriction requirement in F1 column, line 2, F2 column, line 2 and F 3 column, line 2, respectively. Moreover, MPEP 818.01 and 819 states that the election is fixed upon receipt of an office action on the merits and the Office is under no obligation to allow applicants to switch their election. The elected invention has already received an action on the merits. No switch in the elected invention will be permitted.

DECISION

For these reasons, the Petition under 37 C.F.R. 1.144 and 1.181 to request withdraw of the restriction requirement and permit applicants to change their elected invention is **DENIED**.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded to the examiner for consideration of the Office action filed on 22 June 2004 as part of the same paper as the petition.

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.

Bruce Kisliuk
Director, Technology Center 1600.

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Alexandria, VA 22313-1450
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AUG 26 2005

ROBINS & PASTERNAK LLP
1731 Embarcadero Road, Suite 230
Palo Alto CA 94303

In re Application of
Q. Liu et al
Serial No. : 09/989,994
Filed : November 20, 2001
Attorney Dkt No. : 8325-0011.20

Renewed Decision on Petition

This letter is in response to the Request for Reconsideration under 35 USC 1.144, filed 17 July 2005 of a petition which was denied on 15 April 2005.

BACKGROUND

The previous petition decision summarizes the prosecution history up to 15 April 2005. A final Office action was mailed 11 May 2005, in which all claims were rejected. This request for reconsideration was filed on 17 June 2005.

DISCUSSION

The application, file history, petition filed 22 July 2004, the decision and the renewed request review and withdrawal of the final restriction requirement have been considered.

Applicants point to five issues of concern.

(1) Could peptides longer than 90 amino acids have been generated in high yield and purity by synthesis techniques available at the time of filing the application?

Initially, it is noted that the concern as raised by the renewed petition is not in keeping with the guidance in Chapter 800 with regard to distinction between related inventions and is not commensurate in scope with the inventions as claimed.

The principals for distinction between related inventions are summarized in MPEP 806.01.

In passing upon questions of double patenting and restriction, it is the claimed subject matter that is considered and such claimed subject matter must be compared in order to determine the question of distinctness or independence.

This concern bout chemical synthesis is apparently posed with regard to one of the grounds for distinction between the DNA and protein inventions in the restriction requirement. The Examiner asserted that the DNA and protein were patentably distinct because, among other reasons, the protein, as claimed, does not require the nucleic acid invention, as claimed, for its synthesis. Applicant's arguments concerning the high yield and purity are not persuasive. The claims recite a product requiring only an individual molecule. The claims are not directed to a process which requiring a high yield or a composition which has obtained any particular degree of purity.

(2) Is there a natural source of the claimed proteins and nucleic acids?

The second concern is not persuasive as it is also not commensurate in scope with the claims, as amended. The claimed invention set forth in independent claim 1 now requires that the invention is limited to non-naturally occurring zinc finger proteins.

(3) Could one skilled in the art have recognized, as of the filing date, that a nucleic acid encoding a non-naturally occurring protein could have been used in a hybridization assay?

The third concern questions the additional use for the DNA molecules beyond that of encoding the protein. Certainly the DNA encoding the zinc finger protein could be used to in a hybridization assay to screen for nucleic acid molecules which are similar in sequence or to confirm identity of the cells which produce the zinc finger protein. Additionally, the nucleic acid molecules may be used in a screening as a negative control. It is noted that the outcome of a screening assay is information and negative results obtained from a screening method are as valid an outcome as a positive result.

(4) Concern about double patenting issues will be addressed below after item (5).

(5) Concern that structure is being confused with sequences, with respect to election of species practice under MPEP 803.02.

When species are claimed, the species, as claimed are reviewed for restriction or election of species practice under 803.02. The zinc finger binding proteins may be eligible for election of species practice if the zinc finger binding proteins, as claimed, shared a substantial structural feature which was disclosed as being essential to a common utility. The zinc finger binding proteins, as claimed, do not pass this test. What "structure" is required by all the claimed zinc finger proteins?

The claims under consideration describe the invention in terms of sequence and function. The claims do not require any specific structure. A review of the 66-page

specification and the drawings fails to identify any crystal structure analysis or other information concerning the structure of the zinc finger binding proteins. The structural data in the specification is apparently directed to the target to which the claimed invention binds and not to the claimed zinc finger binding proteins.

Furthermore, it is not clear that the zinc finger binding proteins can be substituted one for another to get the same effect. It is not clear that one common utility is required for all of the zinc finger binding proteins. Each protein, as claimed, appears to be specific for one set of three trimer sequences. A protein which binds to DNA containing one set of trimers is not required by the claims to bind to a DNA molecule containing a different set of trimers.

(4) Clarification required for why the double patenting issues are of a concern for rejoinder of the DNA and protein inventions in this applications.

The Office is bound by 35 USC 101 to issue only one patent for one invention. If plural patent applications read upon the same invention, a terminal disclaimer may be require.

However, if multiple applications arose from a restriction requirement and the Office withdraws the restriction requirement before the patent issues, the Office is prohibited from making a double patenting rejection. See MPEP 804.01 (E).

Applicants' attention is again directed to allowable application number 10/006,069, commonly assigned to the same assignee as with the instant application and also by the inventor Qiang Liu. Application number 10/006,069 contains allowable claim 99 which is directed to a purified nucleic acid encoding a polypeptide comprising a zinc finger protein that comprises SEQ ID Nos 55, 247 and 68. It is noted that SEQ ID Nos 55, 247 and 68 of 10/006,069 are identical to the elected sequences DRSNLTR, TSGHLSR and RSDHLSR of 09/989,994. It is noted that the restriction requirements in both applications are comparable with respect to separation of the nucleic acid and protein inventions.

Applicant has paid the issue fee in 10/006,069 without petitioning the validity of the restriction requirement between protein and DNA inventions. In view of the restriction requirement between DNA and protein inventions of 10/006,069, Applicant have a right to file a divisional application "B" to pursue the non-elected DNA invention and the Office would be prohibited from making a double patenting rejection in application "B" over the protein invention in 10/006,069.

Because the allowable claims in the above referenced co-assigned application are to the purified nucleic acid encoding the elected zinc finger protein, now pending in the instant application, the rejoining of nucleic acid claims to the elected polypeptide group would create confusion and conflict with the restriction requirement set forth in 10/006,069, which also separates the nucleic acid and protein inventions and which applicants have accepted without petition. The Office will not issue two patents

containing claims to the same invention. Moreover, the Office cannot make a double patenting rejection among inventions which were claimed in separate applications as a result of a restriction requirement.

> 37 CFR 1.78 states:
> (b) Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

It appears that the requests made in this petition are counter to the requirement of 37 CFR 1.78(b). The burden is upon applicant to maintain a clear line of distinction between inventions in different applications. Thus maintenance of the restriction requirement between proteins and nucleic acids in this particular application, is proper and consistent in view of the restriction requirement set forth and accepted by applicants in the related application. Applicants have not provided good and sufficient reason why DNA and protein claims should be rejoined in one application and yet divided by a restriction requirement in the other application.

DECISION

For these reasons, the renewed petition to request withdraw of the restriction requirement is **DENIED**.

Any request for consideration must be filed within two (2) months of the mailing date of this decision.

Applicants remain under obligation to reply to the final Office action mailed 11 May 2005 with in the response time specified therein.

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.

Bruce Kisliuk
Director, Technology Center 1600.

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAR 1 4 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS MI 48303

In re Application of
Jason F. HUNZINGER
Application No. 09/990,009
Filed: November 20, 2001
For: **ENHANCED INTER-GENERATION CDMA HARD-HANDOFF PROCEDURE**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Petition to Withdraw Holding of Abandonment under 37 CFR § 1.181(a) filed January 13, 2005. No fee is required.

This application is in an abandoned status for failure to respond to the non-final Office action mailed July 1, 2004. A Notice of Abandonment has not been mailed.

Petitioner alleges non-receipt of the non-final Office action mailed July 1, 2004. In support of the petition, petitioner has provided a statement that the office communicated was not received by the petitioner. In addition, attached to and reference in the petition is a copy of the docket record where the non-received office communication would have been entered had it been received and docketed.

A review of the file finds that the U.S. Postal Service returned the original non-final Office action. Although, there was no finding of irregularity in the correspondence address, there was an obvious irregularity in mailing since the Office action was returned.

The holding of Abandonment is withdrawn.

The petition is **GRANTED.**

The application file will be forwarded to the Technology Center's technical support staff for re-mailing of the non-final Office action originally mailed on July 1, 2004. The shortened statutory period of three months will be set to begin as of the mailing thereof.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 8

ROSS J. OEHLER
AVENTIS PHARMACEUTICALS INC.
ROUTE 202-206
MAIL CODE: D303A
BRIDGEWATER, NJ 08807

COPY MAILED
MAY 2 6 2004
OFFICE OF PETITIONS

In re Application of	:	
Bashiardes, et al.	:	
Application No. 09/990,015	:	ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No. ST97019USCNT	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 8, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed November 30, 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 January 31, 2002. A Notice of Abandonment was mailed on November 5, 2003.

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

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

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

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COMMISSIONER FOR PATENTS
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Paper No. 10

THE CLOROX COMPANY
1221 BROADWAY PO BOX 2351
OAKLAND, CA 94623

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MAR 07 2005

OFFICE OF PETITIONS

In re Application of
Shumanta Mitra, et al.
Application No. 09/990,028
Filed: November 21, 2001
Attorney Docket No. 340.138

ON PETITION

This is a decision on the petition, filed December 13, 2004, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The application became abandoned for a failure to reply in a timely manner to the non-final Office action mailed November 20, 2002. A Notice of Abandonment was mailed on September 29, 2003.

The petition is found to comply with the requirements of 37 CFR 1.137(b). Accordingly, the petition is **GRANTED**.

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 1751 for consideration of the amendment filed December 13, 2004.

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

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Paper No. 8

SHUMAKER & SIEFFERT, P.A.
8425 SEASONS PARKWAY, SUITE 105
ST. PAUL, MN 55125

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SEP 0 8 2003

OFFICE OF PETITIONS

In re Application of
Stephen D. Heinrich et al.
Application No. 09/990,045
Filed: November 21, 2001
Attorney Docket No. P-8967.00

ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed June 26, 2003, for acceptance of a power of attorney by less than all the applicants in the above-identified application.

The petition is **granted**.

A revocation and power of attorney filed November 18, 2002 was signed by inventors Heinrich and Ward and gave Power of Attorney to Shumaker & Sieffert, P.A. at 8425 Seasons Parkway, Suite 105 St. Paul, MN 55125 as the correspondence address of record.

Petitioner Ward Brown holds an undivided one half interest in the instant application and by way of assignment has conferred 45% interest to Cardiac Pacemakers, Inc.[1] Acceptance of the power of attorney on behalf of applicant Ward is requested since the applicants or owners no longer share a mutuality of interest and desire for the attorneys and agents appointed in the originally filed Power of Attorney to continue to act as a common representative. The petition is accompanied by a revocation and power of attorney executed by joint inventor Ward Brown.

For the reasons stated above, it would be appropriate to grant the relief requested by petitioner.

However, in order to assure that all interests are properly and effectively represented, all further correspondence to the Patent and Trademark Office (PTO) must be signed by petitioner's representative (Finnegan et al.) as named in the revocation and power of attorney submitted by Ward Brown and by coinventor Stephen D. Heinrich's representative (Shumaker et al). Each attorney signing subsequent papers must indicate whom he or she represents.

All parties are reminded that dual correspondence is not permitted, and will not be undertaken by the PTO.

The PTO will continue to conduct correspondence with the attorneys first named in the application, i.e., Shumaker & Sieffert, P.A., at the correspondence address of record

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[1]A copy of the aforementioned assignment of the above-identified application is provided for recordation.

noted above, who will also be responsible for coordinating replies or submissions to the PTO. See MPEP 402.10.

This application is being returned to Group 3763 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

cc:
Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, NW
Washington, DC 20005-3315

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Paper No. 20

Thompson Coburn, LLP
One US Bank Plaza
Suite 3500
St. Louis, MO 63101

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SEP 0 3 2004
OFFICE OF PETITIONS

In re Application of	:	
Cory O. Nykoluk, et. al.	:	
Application No. 09/990,076	:	NOTICE
Filed: November 21, 2001	:	
Attorney Docket No. 16513-8679	:	

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

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

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

There is no indication that the person signing the Request for Correction of Entity Status 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 Kirk Damman appearing on the request shall constitute a representation to the United States Patent and Trademark Office that he/she is authorized to represent the particular party in whose behalf he/she acts. However, if Kirk Damman desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

This file is being forwarded to Technology Center Art Unit 3727 for review of the Request for Continued Examination (RCE) under 37 CFR 1,114, the amendment, and three (3) months extension of time all filed on June 21, 2004.

Inquiries related to this communication should be directed to the undersigned at (703) 308-6711.

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

CC: Kirk Damman
Lewis, Rice, & Fingersh, L.C.
Attn: Box IP Dept.
500 N. Broadway, Suite 2000
St. Louis, MO 63102-2147

UNITED STATES PATENT AND TRADEMARK OFFICE

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PLANTRONICS, INC.
345 ENCINAL STREET
P.O. BOX 635
SANTA CRUZ, CA 95060-0635

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OFFICE OF PETITIONS

In re Application of	:	
Osman K. Isvan	:	
Application No. 09/990,097	:	DECISION ON PETITION
Filed: November 20, 2001	:	
Attorney Docket No. 01-6145	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2007, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue and publication fees on or before October 11, 2007, as required by the Notice of Allowance and Fee(s) Due, mailed July 11, 2007. Accordingly, the date of abandonment of this application is October 12, 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 $1400, (2) the petition fee of $1540; and (3) a proper statement of unintentional delay.

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

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

April M. Wise
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
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NOV 19 2003

STEPHEN B. DAVIS
BRISTOL-MYERS SQUIBB COMPANY
PATENT DEPARTMENT
P O BOX 4000

#15

In re Application of	:
Paul J. Gilligan et al	:
Serial No.: 09/990,138	: WITHDRAWAL OF ABANDONMENT
Filed: September 21, 2001	:
Attorney Docket No.: PH-7094-A	:

This is in response to the petition under 37 CFR 1.181, filed August 26, 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 December 18, 2002, setting a three 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 August 8, 2003. Applicant states that a reply was filed on May 19, 2003, and provides a copy of a reply with a properly executed Certificate of Express Mailing dated May 19, 2003. The original submission has now been located and entered in the file. 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.

Bruce M. Kisliuk
Director, Technology Center 1600

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Steven B. Davis
Bristol-Myers Squibb Company
Patent Department
P.O. Box 4000
Princeton, New Jersey 08543

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MAY 16 2005

OFFICE OF PETITIONS

In re Application of
Gilligan et al.
Application No. 09/990,138
Filed: November 21, 2001
Attorney Docket No. PH-7094-A(BMS-0875)

: DECISION GRANTING PETITION

This decision is in response to Applicant's "REQUEST FOR RECONSIDERATION OF USPTO'S PATENT TERM ADJUSTMENT DETERMINATION" timely[1] filed on March 25, 2004. Applicants' request that the PTA determination be adjusted from zero (0) days to twenty-nine (29) days.

Applicants request for reconsideration is **GRANTED.** The correct determination at the time of the mailing of the notice of allowance is twenty-nine (29) days. The Office will adjust the PAIR calculation to reflect this decision.

Applicants assert that they are entitled to an adjustment of the PTA calculation because the Office failed to respond to applicants' amendment filed on May 19, 2003 until January 14, 2004, a one hundred and seventeen (117) day delay. Applicants assert that the nineteen (19) days that were granted were in error because the Office improperly entered the wrong date of response as being August 26, 2003 rather than the proper fate of response of May 19, 2003. Applicants also assert that they failed to reply to the Office action within three months on three occasions for a total of eighty-eight (88) days. Accordingly, applicants assert that the correct amount of PTA is twenty-nine days (117-88=29).

Applicants arguments are persuasive. A review of the file reveals that applicants were correct in the actual date of response of May 19, 2003 rather than the date reflected in the PALM records which was August 26, 2003. Accordingly, the Office failed to reply to applicants' response within four months as required by 37 CFR 1.704(a)(2). In addition, applicants were also correct in the amount of delay by applicants (88 days) pursuant to 37 CFR 1.704(b). Accordingly, the correct amount of PTA at the time of the mailing of the notice of allowance is twenty-nine (29) days.

The office acknowledges receipt of the $200.00 fee. No additional fees are required by this request for reconsideration.

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[1]PALM indicates that the issue fee was filed on March 25, 2004.

The Office will forward this application to the Office of Publications for a prompt issuance of this application. The Office notes that any PTA delay in issuing the patent beyond four month issue fee payment date will be reflected in the determination that is reflected in the issue notification letter.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor for the Office of Deputy Commissioner for Patent Examination Policy, at 703-571-7757.

Kery A. Fries
for

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

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

MAY - 1 2003

#7

CATHRYN CAMPBELL
CAMPBELL & FLORES LLP
4370 LA JOLLA VILLAGE DRIVE
7TH FLOOR
SAN DIEGO CA 92122

In re Application of	:
Krzysztof Palczewski et al	:
Serial No.: 09/990, 185	: WITHDRAWAL OF ABANDONMENT
Filed: November 21, 2001	:
Attorney Docket No.: P-NS 4975	:

This is in response to applicants' petition under 37 CFR 1.181, filed February 14, 2003, requesting revival of the above-identified application based on non-receipt of an Office action.

A review of the file history shows the examiner mailed an Office action to applicants on June 20, 2002, setting a one month shortened statutory period for reply. Upon failure to receive a reply the application was held abandoned as of January 21, 2003, however a Notice of Abandonment has not yet been mailed to applicants. Applicants state that the Office action was misaddressed and never received and provide statements and docket record evidence of non-receipt in support thereof. A review of the Office action shows that it was mailed to the wrong attorney for unexplained reasons. In view thereof, the Notice of Abandonment is withdrawn and the application is restored to a pending status with the mailing of this decision.

Applicants' petition is **GRANTED**.

As applicants have obtained a copy of the Office action and provide a reply thereto with the petition, the application will be forwarded to the examiner for further consideration.

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

John Doll
Director, Technology Center 1600

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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
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ROBINS & PASTERNAK
1731 EMBARCADERO ROAD
SUITE 230
PALO ALTO, CA 94303

Mail Date: 04/21/2010

Applicant	: Qiang Liu	: DECISION ON REQUEST FOR
Patent Number	: 7030215	: RECALCULATION of PATENT
Issue Date	: 04/18/2006	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/990,186	: OF WYETH
Filed	: 11/20/2001	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

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

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

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. 7

FOLEY & LARDNER
P O BOX 80278
SAN DIEGO, CA 92138-0278

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MAR 1 1 2003

OFFICE OF PETITIONS

In re Application of
Doucas; Evans and Trono
Application No. 09/990,255
Filed: November 20, 2001
Attorney Docket No. SALK2150-1
(088802-4901)

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

This is in response to the communication filed October 16, 2002, which, in view of the statement that "Dr. Doucas has been an uncooperative inventor" and in a light most favorable to applicant, is being treated as a petition under 37 CFR 1.47(a).

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on November 20, 2001 with a declaration executed by joint inventors Ronald M. Evans and Didier Trono, but not by joint inventor Vassilis Doucas. Accordingly, on March 12, 2002, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration by joint inventor Doucas and a surcharge. The Notice additionally required compliance with the requirements of 37 CFR 1.821-1.825.

In response to the requirement for an executed oath or declaration by joint inventor Doucas, on October 16, 2002, the instant communication which is being treated as a petition under 37 CFR 1.47(a), bearing a certificate of mailing date of October 11,

2002, along with copies of a petition under 37 CFR 1.48(a) filed in parent Application No. 08/975,272, an extension of time fee of $980 for a five month extension of time, and authorization to charge any additional fees required, was filed. The petition of October 16, 2002 also states that the request to comply with the requirements of 37 CFR 1.821-1.825 has been issued in error since there are no sequences in the application, nor was a sequence requirement issued in the parent application.

Initially, to address the sequence requirement made in the Notice of March 12, 2002, petitioner is correct that the application does not contain a sequence listing. Therefore, this requirement was made in error and is hereby withdrawn.

Next, petitioner should note that it is immaterial in this case that a determination first be made in the parent application as to the correct inventorship, since the instant divisional application was submitted with a declaration naming all the inventors and executed by two of the three joint inventors. In a nonprovisional application filed under 35 U.S.C. 111(a), where the first-filed executed oath or declaration was filed on or after December 1, 1997 and names the correct inventors, a petition under 37 CFR 1.48 is not required. *See* 37 CFR 1.48(f)(1). Further, an available remedy to obtain correction of inventorship where waiver of a required statement is not available to correct the inventorship in a particular application is to refile the application naming the correct inventive entity. Benefit of the parent application's filing date would be available under 35 U.S.C. 120 provided there is at least one inventor overlap between the two applications. Therefore, the fact that a petition to correct inventorship in the parent application was either not decided, not decided prior to issuance, or decided adversely does not affect the inventorship in the instant application, since the first-filed executed oath or declaration set the inventive entity herein.

As to the petition under 37 CFR 1.47(a), a grantable petition under 37 CFR 1.47(a) requires: (1) proof that the nonsigning inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the nonsigning inventor. Applicant lacks items (1) and (4) set forth above.

As to item (1), rule 47 applicant must demonstrate with documented evidence that an inventor refuses to join in the application after having been presented with the application papers (specification, claims, drawings and oath or declaration). There

is no indication as to whether joint inventor Vassilis Doucas was ever presented with a copy of the complete application papers for the instant nonprovisional application. Before a refusal can be alleged, it must be demonstrated that a copy of the application papers for the instant nonprovisional application was presented to the nonsigning inventor. If joint inventor Doucas was not presented with a copy of the application papers for the instant nonprovisional application, then joint inventor Doucas could not attest that he has "reviewed and understands the application papers" and could not execute the declaration he was requested to sign. Did joint inventor Doucas receive a copy of the application papers? Unless petitioner can show that a copy of the application papers was presented to joint inventor Doucas, then petitioner will have to mail a copy of the complete application papers (specification, claims and drawings) to the last known address of joint inventor Doucas, return receipt requested. A cover letter of instructions should accompany the mailing of the application papers setting a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. **The proof of the pertinent events should be made by a statement of someone with firsthand knowledge of the events and should include documentary evidence, such as certified mail return receipt, cover letter of instructions, telegram, etc.** See MPEP 409.03(d).

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration **by the party to whom the refusal was made.** Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

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

As to item (4), a statement of the inventor's last known address is missing and is required.

In order to exp dite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47(a) by facsimile transmission to the telephone number indicated b low and to the attention of the undersigned.

As authorized, the $130 fee for the instant petition under 37 CFR 1.47(a) and the $65 surcharge fee will be charged to petitioner's Deposit Account No. 50-0872.

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

By mail: U.S. Patent and Trademark Office
P.O. Box 2327
Mail Stop DAC
Arlington, VA 22202

OR

Commissioner for Patents
Box DAC
Washington, D.C. 20231

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

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

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

Frances Hicks

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

Conferree: Brian Hearn

UNITED STATES PATENT AND TRADEMARK OFFICE

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P O BOX 80278
SAN DIEGO, CA 92138-0278

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SEP 1 7 2003

OFFICE OF PETITIONS

In re Application of	:	
Doucas; Evans and Trono	:	
Application No. 09/990,255	:	DECISION GRANTING
Filed: November 20, 2001	:	STATUS UNDER 37 CFR 1.47(a)
Attorney Docket No: SALK2150-1	:	
(088802-4902)	:	

This is a decision on the petition filed September 11, 2003, requesting reconsideration of a decision mailed March 11, 2003, which refused to accord 37 CFR 1.47(a) status to the above-identified application.

The petition is granted.

Petitioner has shown that the nonsigning inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the nonsigning inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

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

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

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Vassilis Doucas
87 ru d Caroug
1205 Geneva
Switzerland

In re Application of
Vassilis Doucas; Ronald M. Evans; and Didier Trono
Application No. 09/990,255
Filed: November 20, 2001
For: METHOD FOR THE IDENTIFICATION AND USE OF SUBSTANCES THAT MODULATE POD FUNCTION AND/OR STRUCTURE

Dear Mr. Doucas:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at (703) 305-8680. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Frances Hicks

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

cc:

Foley & Lardner
P O Box 80278
San Diego, CA 92138-0278

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OFFICE OF PETITIONS

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

In re Application of :
Hiroshi Sugiura et al :
Application No. 09/990,264 : ON PETITION
Filed: November 23, 2001 :
Attorney Docket No. 216379US2 :

This is a decision on the petition, filed November 15, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on July 29, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 1745 will consider the request for continued examination under 37 CFR 1.114.

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

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

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wk

Mailed: 9-24-07

In re application of	:	
Sugiura et al.	:	DECISION ON
Serial No. 09/990,264	:	PETITION
Filed: November 23, 2001	:	
For: Fuel Cell Output Characteristic Estimation Apparatus And Output Characteristic Estimation Method, Fuel Cell System and Vehicle Having The Same, And Fuel Cell Output Control Method and Data Storage Medium	:	

This is a decision on the petition filed on August 30, 2007. The petition requests to reset the rejection date based on failure to receive an office action via e-mail from the Patent Office. A rejection was issued by the Patent Office on March 23, 2007 however applicant never received a PAIR e-mail notification about this application.

DECISION

The instant petition is accepted as a petition under 37 CFR 1.181(no fee).

The petition is **GRANTED**.

The Office Action due date will be reset to August 29, 2007.

William Krynski, Quality Assurance Specialist
Technology Center 1700
Chemical and Materials Engineering

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Stolowitz Ford Cowger LLP
621 SW Morrison St
Suite 600
Portland, OR 97205

Mail Date: 04/21/2010

Applicant	: Chui-Kuei Chiu	: DECISION ON REQUEST FOR
Patent Number	: 7593141	: RECALCULATION of PATENT
Issue Date	: 09/22/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/990,291	: OF WYETH
Filed	: 11/23/2001	:
		:

The Patentee's Request for Recalculation is **DISMISSED.**

This Request is deemed ineligible for consideration for one or more of the following reasons:

(A). The patent for which PTA recalculation is requested is either a design or reissue application or is a reexamination proceeding;

(B). The patent for which PTA recalculation is requested resulted from a utility or plant application filed under 35 USC 111(a) before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(C). The patent for which PTA recalculation is requested resulted from an international application in which the international filing date was before May 29, 2000 and no CPA filed in the application on/after May 29, 2000;

(D). The patent for which PTA recalculation is requested issued on/after March 2, 2010;

(E). The Request for Recalculation was filed more than 180 days after the grant date of the patent and the request was not filed within two months of a dismissal of a request for reconsideration of the of the patent term under 37 CFR 1.705(d);

(F). The Request for Recalculation is not solely limited to USPTO pre-Wyeth interpretation of 35 U.S.C. 154(b)(2)(A);

or

(G). A civil action was filed pursuant to 35 U.S.C. 154(b)(4)(A)concerning the same patent at issue in this request.

Patentee may file a reply to this decision dismissing the Request for Recalculation. Patentee must file such reply within one month or thirty days, whichever is longer, of the mail date of the decision dismissing the Request for Recalculation. No fee is required if patentee is asserting in the reply that the dismissal for ineligibility is improper.

Patentee should use document code PET.OP if electronically filing a reply to this dismissal. If the USPTO finds that the request was improperly deemed ineligible, the USPTO will mail applicant a recalculation determination.

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

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

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233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO IL 60606

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SEP 14 2006

OFFICE OF PETITIONS

In re Application of	:
Francine Goulet et al.	:
Application No. 09/990,320	: DECISION ON PETITION
Filed: November 23, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 31014/41515	:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed November 28, 2005, 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 th 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 the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

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

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 3738 for appropriate action on the amendment submitted November 29, 2005, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application.

Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

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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
09/990,320	11/23/2001	3738	1726	216483US6	17	44	2

CONFIRMATION NO. 2528
CORRECTED FILING RECEIPT
OC000000020324249
OC000000020324249

04743
MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO, IL 60606

Date Mailed: 09/06/2006

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)

Francine Goulet, Sainte-Foy, CANADA;
Denis Rancourt, Levis, CANADA;
Rejean Cloutier, Sillery, CANADA;
Julie Tremblay, Beauport, CANADA;
Francois A. Auger, Sillery, CANADA;
Albert Normand, Sainte-Foy, CANADA, Deceased;
Lucie Germain, St-Augustin, CANADA;
Jean Lamontagne, St-Augustin, CANADA;
Marc Bouchard, Sainte-Foy, CANADA;
Eve Langelier, St-Etienne-de-Lauzon, CANADA;
Daniel Dupuis, Sainte-Foy, CANADA;
Stephane Bouchard, Hull, CANADA;
Nazrul Islam, Sainte-Foy, CANADA;
Louis-Mathieu Stevens, Montreal, CANADA;
Sheila Laverty, St-Charles-sur-Richelieu, CANADA;
Bertrand Lussier, St-Hyacinthe, CANADA;
Anne-Marie Belzil, Outremont, CANADA;
Pierrot Tremblay, Chicoutimi, CANADA;

Assignment For Published Patent Application

SWABEY OGILVY RENAULT, Quebec, CANADA

Power of Attorney: The patent practitioners associated with Customer Number **22850**.

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/252,588 11/24/2000

Foreign Applications
If Required, Foreign Filing License Granted: 02/05/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US09/990,320

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Connective tissue substitutes, method of preparation and uses thereof

Preliminary Class

623

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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

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

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

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

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

GRANTED

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

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

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

NOT GRANTED

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

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MARSHALL, GERSTEIN & BORUN LLP
233 S. WACKER DRIVE, SUITE 6300
SEARS TOWER
CHICAGO IL 60606

JUN 0 4 2007

In re Application of:
GOULET, FRANCINE et al
Serial No.: 09/990,320
Filed: Nov. 23, 2001
Docket: 31014/41515
Title: CONNECTIVE TISSUE SUBSTITUTES, METHOD OF PREPARATION AND USES THEREOF

DECISION ON PETITION TO WITHDRAW OF HOLDING OF FINALITY

This is a decision on the petition filed on Nov. 28, 2005 to withdraw the finality of the Office Action of Jul. 25, 2005. The petition is being considered pursuant to 37 CFR 1.181 and no fee is required for the petition.

The petition is **DISMISSED as moot**.

In the petition the applicant requested a withdrawal of the finality of the Office action mailed on Jul. 25, 2005. In support of his petition, the applicant argues that the first action final Office action on Jul. 25, 2005 after the filing of an RCE under 37 CFR 1.114 was improper according to MPEP 706.07(b).

The record shows that:

1) In response to a non-final Office action, on Oct. 6, 2003, the applicant filed an amendment to claims 12, 18 and 19 and presented new claims 45-48.
2) On Dec. 22, 2003, the examiner issued a final Office action with new grounds of rejection because the new grounds of rejection were necessitated by the amendment filed Oct. 6, 2003.
3) On May 21, 2004, the applicant filed an RCE for further continuing examination of the application. The only amendments to the claims submitted with the RCE filed on May 21, 2004 were to fix typographical errors in claims 10 and 18.
4) On Jul. 25, 2005, the examiner issued a first action final Office action on the grounds that all of the claims were drawn to the same invention in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application in accordance with MPEP 706.07(b).

5) On Nov. 28, 2005, the applicant filed the current request for withdrawal of finality of office action and issuance of a new office Action.
6) On Jan. 3, 2006, the applicant filed an RCE for further continuing examination of the application.
7) On Mar. 16, 2006, the examiner withdrew the finality of the final Office action of Jul. 25, 2005 and issued a non-final Office action.

In view of the prosecution history, the relief the applicant requested, namely the withdrawal of the finality of the Jul. 25, 2005 Office Action, has already occurred. Accordingly, the petition is dismissed as moot.

Any inquiry regarding this decision should be directed to Marc Jimenez, Training Quality Assurance Specialist, at (571) 272-4530.

Karen M. Young

Frederick R. Schmidt, Director
Technology Center 3700

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JUL 13 2009

OFFICE OF PETITIONS

In re Patent No. 7,335,230 :
Issue Date: February 26, 2008 :
Application No. 09/990,320 : DECISION ON PETITION
Filed: November 23, 2001 :
Attorney Docket No. 31014/41515 :

This is a decision on the Request under 37 CFR 3.81, filed August 11, 2008 to add the second assignee's name and residence on the PTOL-85B. The Request is being treated as a Petition. A completed Certificate of Correction Form was also submitted on August 11, 2008.

The petition under 37 CFR 3.81 is **GRANTED**.

Petitioner urges that the present Petition was submitted to correct the omission of the second assignee's name and residence on the previously submitted PTOL-85B and that such omission was inadvertently included on form PTOL-85B. Accordingly, petitioner requests that a Certificate of Correction (PTO-1050) be issued to add the erroneously omitted assignee's name and residence to the Title Page of the Letters Patent.

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

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

The requisite $100.00 fee (Fee Code 1811) as set forth under 37 CFR 1.20(a), and the requisite $130.00 processing fee (Fee Code 1464) as set forth under 37 CFR 1.17(i) were submitted. Further, Office assignment records are consistent with the requested correction. Accordingly,

since the Petition complies with the provisions of 37 CFR 3.81(b), it is appropriate for the Office to issue a Certificate of Correction in accordance with the content of the Form PTO/SB/44 that accompanied the present Petition.

Inquiries related this communication should be directed to Cheryl Gibson-Baylor at (571)272-3213.

Any questions concerning the issuance of a Certificate of Correction should be directed to the Certificates of Correction Branch at (571) 272-4200.

This matter is being referred to the Certificates of Correction Branch for processing of a Certificate of Correction in U.S. Patent No. 7,335,230.

Brian W. Brown
Petitions Examiner
Office of Petitions

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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

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

In re Application of

Application No. 09/990,324
Filed: November 23, 2001

DECISION ON PETITION
TO RESET PERIOD FOR REPLY

For: **CODE SYNCHRONOUS TIMING DETERMINING METHOD UPON INFORMATION RECEPTION IN CDMA SYSTEM, DETERMINING APPARATUS, AND CDMA RECEIVING APPARATUS**

This is a decision on the Petition to reset the period for reply under 37 CFR § 1.181(a) filed April 27, 2005.

Petitioner contends that the Office action mailed January 24, 2005 was not received by mail and was only accessed via the PAIR system. Petitioner requests that the period for reply be reset from the date the Office action was actually "received" from the USPTO's system. MPEP 710.06 is used in support of the request. It is noted that MPEP 710.06 outlines relief that applicant may obtain if an original Office communication was received late. The relief afforded does not include receiving the communication by other means, e.g. facsimile, PAIR, e-mail, etc.

However, a review of the file finds that the U.S. Postal Service returned the original non-final Office action.

The application file will be forwarded to the Technology Center's technical support staff for re-mailing of the non-final Office action originally mailed on January 24, 2005. The shortened statutory period of three months will be set to begin as of the mailing thereof.

The petition is **GRANTED** to the extent indicated herein.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600

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)
6664760	2003-12-16	09990351	2001-11-23	TMI-106

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	/John R. Mattingly/	Date (YYYY-MM-DD)	2009-12-16
Name	John R. Mattingly	Registration Number	30293

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. 6664760
Issue Date: December 16,2003
Application No. 09990351
Filed: November 23,2001
Attorney Docket No. TMI-106

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

This is a decision on the electronic petition, filed December 16,2009 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is **GRANTED**.

The maintenance fee is accepted, and the above-identified patent reinstated as of December 16,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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MAIL

APR 1 1 2005

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ROSENBERG, KLEIN & LEE
3458 ELLICOTT CENTER DRIVE-SUITE 101
ELLICOTT CITY MD 21043

In re Application of:
Huang-Tsun Chen
Application No. 09/990,353
Filed: November 23, 2001
For: **MOTIONLESS-IMAGE DISPLAY WITH AUTO-ADJUSTING LIGHT SYSTEM AND THE METHOD FOR FORMING THE SAME**

DECISION
ON PETITION

This is a response to the Petition to Withdraw Notice of Abandonment, filed March 7, 2005. The petition is being treated under 37 CFR 1.8(b) to withdraw the holding of abandonment.

This application became abandoned for failure to timely file a response to the final Office action mailed April 5, 2004, which set a shortened statutory period of three (3) months to reply. A Notice of Abandonment has not been mailed.

A review of the file record reveals that a final Office action was mailed on April 5, 2004, setting a three month shortened statutory period for reply. On July 1, 2004, Applicant filed a response to the final Office action. On August 4, 2004, the Office mailed an Advisory action which indicated that claims 1-11 remained rejected and claims 12-17 were allowed. On October 5, 2004, the file record reveals that a response was received from Applicant which cancelled claims 1-11, leaving only allowed claims 12-17. However, the file record did not reveal a petition for a three month extension of time. Therefore, the application was technically abandoned on July 6, 2004.

Petitioner alleges to have timely filed a response to the Office action on October 5, 2004 along with a petition for extension of time for three months. To support this position, Petitioner has included with the instant petition a copy of the petition for three months extension of time bearing a proper certificate of transmission having a date of October 5, 2004.

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

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

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

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

Petitioner has met the requirements above. Accordingly, the holding of abandonment is withdrawn.

The petition is **Granted**.

37 CFR §1.116 Amendments after final action or appeal, states:

(a) An amendment after final action or appeal must comply with § 1.114 or this section.

(b) After a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under §1.135, or the reexamination from termination. No amendment can be made in an inter partes reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (d) of this section.

(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

(d) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § § 1.198 and 1.981, or to carry into effect a recommendation under § 1.196 or § 1.977. [emphasis added]

Applicant's amendment of October 5, 2004, cancelled the non-allowed claims leaving only the allowed claims. This amendment complies with 37 CFR §1.116.

The application will be forwarded to the Technology Center's technical support staff for entry of the petition for three months extension and entry of the response filed October 5, 2004 as an After Final Amendment. From there, the file will be forwarded to the examiner for consideration in due course.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

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JAN 04 2007

Technology Center 2100

Edward Langer, Patent Attorney
c/o SHIBOLETH, YISRAELI, ROBERTS, ZISMAN & CO.
Empire State Building, 60th floor
350 Fifth Ave.
New York, NY 10118

In re Application of: Suraski, et al.	)	
Application No. 09/990,380	)	**DECISION ON PETITION TO**
Attorney Docket No. Z-44-1 US	)	**WITHDRAW HOLDING OF**
Filed: 23 November 2001	)	**ABANDONMENT UNDER 37 CFR**
For: METHOD AND APPARATUS FOR	)	**§1.181**
DYNAMIC SHARED-MEMORY	)	
CACHING OF SCRIPTING ENGINE	)	
PRODUCT		

This is a decision on the petition, filed 15 December 2005 requesting the Withdrawal of the Abandoned status of the above-identified application, under 37 CFR §1.181. A Notice of Abandonment was mailed on 22 September 2005, for failure to respond to the Office Action of 11 February 2005.

The petition is **GRANTED**.

According to the MPEP §711.03(c), the showing required to establish non-receipt of an Office action includes the following:

1) a statement from practitioner that the Office action was not received,
2) a statement from practitioner that the file jacket and docket records were searched,
3) a copy of the docket record at the address of record, and
4) a reference to the docket record in the practitioner's statement.

In support of the petition, applicants' representative provides a statement that the Office action was not received and that a search of the file jacket and docket records has been performed. Petitioner also provides a copy of the docket record which are indicated to be from the office of record. Finally, Petitioner provides reference to the docket record in the statement provided.

Petitioner has established non-receipt of the Office action according to the requirements set forth supra. Accordingly, 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/REMAIL** the Office action originally mailed February 11, 2005.

Any questions regarding this decision may be directed to the undersigned at 571-272-3595.

Brian L. Johnson
Workgroup Quality Assurance Specialist
Technology Center 2100
Computer Architecture, Software, and Information Security

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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Paper No.

WESTERN DIGITAL TECHNOLOGIES, INC.
ATTN: SANDRA GENUA
20511 LAKE FOREST DR.
E-118G
LAKE FOREST CA 92630

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MAY 19 2006
OFFICE OF PETITIONS

In re Application of	:	
Kubota et al.	:	DECISION ON
Application No. 09/990,408	:	PETITION
Filed: November 21, 2001	:	
Atty Docket No. K35RA0060.D	:	
	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 9, 2006.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to pay the Issue Fee and Publication Fee within three months of the mailing date, January 21, 2005, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. No reply having been received, the above-identified application became abandoned on April 22, 2005. A courtesy Notice of Abandonment was mailed on August 22, 2005.

The petition included required reply[1] in the form of payment of the Issue Fee and Publication Fee; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

The Office of Patent Publication has been advised of this decision.

[1] There was no distinct but concurrent requirement for new drawings.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KOLISCH HARTWELL, P.C.
520 S.W. YAMHILL STREET
SUITE 200
PORTLAND, OR 97204

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OFFICE OF PETITIONS

In re Application of :
William R. Reetz et al :
Application No. 09/990,472 : ON PETITION
Filed: November 20, 2001 :
Attorney Docket No. RTZ 302D :

This is a decision on the petition under 37 CFR 1.137(b), filed August 10, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 11, 2004, which set a shortened statutory period for reply of three (3) months. A reply under 37 CFR 1.113 is limited to an amendment that *prima facie* places the application in condition for allowance or a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)). Since the amendment submitted on August 16, 2004 did not *prima facie* place the application in condition for allowance as noted in the Advisory Action mailed September 2, 2005. Therefore, as no Notice of Appeal (and appeal fee), Request for Continued Examination (RCE) or a continuing application was timely filed, and no extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on August 12, 2004.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of a continuing application No. 11/201,748.

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

This matter is being referred to Files Repository.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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HARNESS, DICKEY & PIERCE, P.L.C.
P. O. BOX 828
BLOOMFIELD HILLS, MI 48303

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OFFICE OF PETITIONS

In re Application of :
Yue Ma, et al. :
Application No. 09/990,498 :
Filed: November 21, 2001 :
Attorney Docket No. 9432-000145 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 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 final Office action mailed February 12, 2004, which set a shortened statutory period for reply of three (3) months. A one-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. An Advisory action was mailed September 7, 2004 indicating that the reply filed on June 23, 2004 failed to place the application in condition for allowance. Accordingly, the application became abandoned on June 13, 2004.

Receipt is acknowledged of the Amendment filed September 27, 2004, with the instant petition.

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

The application matter is being forwarded to Technology Center 2600, Art Unit 2675 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 9

DILWORTH & BARRESE
333 EARLE OVINGTON BOULEVARD
UNIONDALE, NY 11553

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MAR 19 2003

OFFICE OF PETITIONS

In re Application of :
Dan A. Steinberg et al :
Application No. 09/990,509 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. ACT-169(1117-9) :

This is a decision on the petition under 37 CFR 1.137(b), filed February 12, 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 December 3, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 4, 2002.

The power of attorney, filed on February 11 and 12, 2003, has not been accepted. The power of attorney is from an assignee and the Certificate required by 37 CFR 3.73(b), that must accompany any and all such filings, has not been received.

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

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

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

cc: BROWN RUDNICK BERLACK ISRAELS
BOX IP
ONE FINANCIAL CENTER
BOSTON, MA 02111

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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Alexandria, Virginia 22313-1450
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February 11, 2004

Scott B. Strohm
Shook, Hardy & Bacon
One Kansas City Place
1200 Main St.
Kansas City, MO 64105-2118

In re application of:
Walter R. Smith DECISION ON PETITION
Serial No.: 09/990,527
Filed: November 21, 2001

For: METHOD AND SYSTEM FOR RECORDING PROGRAM INFORMATION IN THE EVENT OF A FAILURE

This is a decision on the petition received on January 16, 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 December 7, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 8, 2002. A notice of abandonment was mailed on December 17, 2003.

On January 16, 2004, the office received a communication from the attorney of record. Enclosed was an acknowledgment that the attorney responded to the Notice to File Missing Parts on December 27, 2001.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts on December 27, 2001 with a certification of mailing dated December 27, 2001.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 2184.

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

Doshie Day

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

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Paper No. 6

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JAN 0 8 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

DECHERT LLP
P.O. Box 10004
Palo Alto, CA 94303-0961

In re Application of
Charles Gregory NELSON
Application No. 09/990,542
Filed: November 20, 2001
For: CODE GENERATION BY MATCHING AND SATISFIABILITY SEARCH

DECISION ON REQUEST FOR WITHDRAWAL AS ATTORNEY

This is a decision on the Request To Withdraw from Representation filed December 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 communication 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 U.S. Patent and Trademark Office (the Office) of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Hewlett-Packard Company
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

UNITED STATES PATENT AND TRADEMARK OFFICE

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COOLEY GODWARD LLP
THE BROWN BUILDING - 875 15TH STREET, NW
SUITE 800
WASHINGTON DC 20005-2221

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SEP 27 2006
OFFICE OF PETITIONS

In re Application of	:	
Gyula Vigh	:	
Application No. 09/990,549	:	DECISION ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No: LIFT-020/01US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 30, 2006, to revive the above-identified application.

This petition is hereby **Dismissed**.

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

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on August 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on November 4, 2005. A Notice of Abandonment was mailed on March 15, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the

delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application or a Request for Continued Examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114. The examiner has determined the amendment submitted with the petition does not place the application in condition for allowance. Accordingly, this application cannot be revived.

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

enclosure: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/990,549	VIGH, GYULA	
	Examiner	Art Unit	
	Kaj K. Olsen	1753	

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

THE REPLY FILED 30 May 2006 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 3 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 Continuation Sheet*. (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: *27-53*.
   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: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

KKO 9-14-2006

Continuation of 3. NOTE: having the isoelectric substance be stationary is a new issue.

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COOLEY GODWARD KRONISH LLP
THE BROWN BUILDING - 875 15TH STREET, NW
SUITE 800
WASHINGTON DC 20005-2221

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DEC 11 2006

OFFICE OF PETITIONS

In re Application of	:	
Vigh	:	
Application No.09/990,549	:	DECISION ON PETITION
Filed: November 21, 2001	:	
Attorney Dkt. No. Lift-020/01US	:	

This is a decision on the petition under 37 CFR §1.137(b), filed October 5, 2006.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on August 3, 2005. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on November 4, 2005. A Notice of Abandonment was mailed on March 15, 2006. A decision dismissing a petition under 37 CFR 1.137(b) was mailed on September 27, 2006.

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

The RCE and the previously submitted amendment will be forwarded to Technology Center 1700 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 11-10-05

Paper No.: _____

TO SPE OF : ART UNIT 2161

SUBJECT : Request for Certificate of Correction on Patent No.: 6944630

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:

BEST AVAILABLE COPY

C. Rones
SPE

2164
Art Unit

Decision On Petition Under 37 CFR 1.48 (b)

May 30, 2003

Application No: 09/990,585
Filed: 11/21/2001

This is a decision on the petition received on 6/6/2002 to correct inventorship under 37 CFR 1.48 (b).

The petition is granted.

It has been found that this application as filed, through error and without any deceptive intent, improperly set forth the inventorship, and accordingly, this application has been corrected in compliance with 37 CFR 1.48 (a). Accordingly, the correct list of named inventors will include: Constantine J. Tsikos; C. Harry Knowles; Xiaoxun Zhu; Michael D. Schnee; Allan Wirth; and Timothy A. Good.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thien Le whose telephone number is (703) 305-3500. The examiner can normally be reached on Monday to Friday from 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (703) 305-3500.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.

Thien Le
Primary Examiner
Art Unit 2876
May 30, 2003

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : January 20, 2006

TO SPE OF : ART UNIT 1712

SUBJECT : Request for Certificate of Correction on Patent No.: 6,962,946/ Appl. 09/990604

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:

The sole change at Column 13, line 18, DOES NOT apply since it would render the asterisk in the Table 1 and the footnote thereto inconsistent.

RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1712

Art Unit

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APR 18 2006

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

In re Application of	:
Baker et al.	:
Serial No.: 09/990,711	: PETITION DECISION
Filed: November 14, 2001	:
Attorney Docket No.: P2730P1C2	:

This letter is in response to the Petition under 37 CFR 1.181, filed March 9, 2006 requesting (1) that the rejections containing the six new references which have been used by the examiner in the Examiner's Answer be designated as new grounds of rejection; (2) that the examiner provide a corrected Examiner's Answer which identifies the rejections as new grounds of rejection; and (3) that prosecution be reopened because of these new grounds of rejection.

BACKROUND

On February 8, 2005, the examiner issued a Final Office action. Applicants filed a Notice of Appeal on August 3, 2005 and an Appeal Brief on November 3, 2005. The examiner mailed to applicants an Examiner's Answer on January 11, 2006. Applicants filed a Reply Brief on March 9, 2006 along with a request for an Oral Hearing and this petition.

DISCUSSION

In the Examiner's Answer, the examiner relied extensively on six new references in order to support the lack of utility and/or lack of enablement rejections. These new references are:

LaBaer ; 2003, Nature Biotechnology 21 :976-977.
Chen et al.; 2002, Molecular and Cellular Proteomics 1:304-313.
Gygi et al.; 1999, Mol. Cell. Biol. 19 :1720-1730.
Lian et al.; 2001, Blood 98:513-524 ; and
Fessler et al.; 2002, J. Biol. Chem. 277:31291-31302.
Greenbaum et al, 2003, Genome Biology 4 :117.1-117.8.

The statutory basis of the rejections 35 USC 101 and 112, first paragraph) in the Examiner's Answer did not change from the FINAL office action mailed to applicants on February 8, 2005. However, it is clear that the examiner used the additional six new references to reinforce these rejections and rebut more thoroughly applicants' arguments. While the applicants did respond to

these new arguments and new references raised by the examiner in the Examiner's Answer in their Reply Brief, they argue that they have been placed at a disadvantage because they are limited in their ability to present substantive evidence of their own in response to these new references and arguments without the reopening of prosecution being granted.

DECISION

For the above reason, the petition under 37 CFR 1.181 requesting (1) that the rejections containing the six new references which have been used by the examiner in the Examiner's Answer be designated as new grounds of rejection; (2) that the examiner provide a corrected Examiner's Answer which identifies the rejections as new grounds of rejection; and (3) that the FINALITY be withdrawn and that prosecution be reopened because of these new grounds of rejection is **GRANTED-IN-PART**.

Applicants' first request that the rejections in the Examiner's Answer be designated "new grounds of rejection" is **GRANTED**.

Applicants' second request has been effectively granted by this Decision on Petition designating the rejections in the Examiner's Answer to be "new grounds of rejection." The further request for the corrected Examiner's Answer is deemed to be moot in view of the Decision on Petition and therefore, **DISMISSED**.

Applicants' third request to have the FINALITY of the application withdrawn and prosecution reopened is **GRANTED** as this is a proper request under the Rules of Prosecution when a new ground of rejection is advanced in an Examiner's Answer. (Alternatively, applicants may rely solely on their Reply Brief and proceed to the Board.)

In view of applicants' expressed limited ability to present new evidence, as noted above, applicants are given TWO MONTHS from the mailing date of this Decision within which to submit any additional arguments, exhibits, affidavits or other evidence which they consider necessary in order to rebut the examiner's new grounds of rejection set forth in the Examiner's Answer. Failure to make any submission will be taken as applicants' agreement to rely solely on the already submitted Reply Brief.

This application is being returned to the examiner for consideration of the Reply Brief which will be treated as a reply to a new "Non-Final" rejection set forth in the Examiner's Answer and further action not inconsistent with this decision.

Applicants have been charged a fee of $130.00 for this petition. However, since there should be no charge for this petition, this $130.00 will be credited to applicants' Deposit Account No. 08-1641.

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

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-22, drawn to a radiation curable coating composition, classified in class 118, subclass 287.23.

II. Claims 23-32, drawn to a method of applying a coating, classified in class 427, subclass 487.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the radiation curable coating could be applied to a different substrate such as wood. Additionally, the coating composition of group I could have a composition comprising 90 parts of oligomeric acrylate, 5 parts of acrylate, 3 parts of colloidal silica, and 2 parts of a photoinitator.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Hahn Pham on 24 July 2002 a provisional election was made WITH traverse to prosecute the invention of group I, claims 1-22.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-32 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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2000 East El Segundo Boulevard
P.O. Box 902
El Segundo, CA 90245

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OCT 3 1 2005

OFFICE OF PETITIONS

In re Application of :
Roy P. McMahon :
Application No. 09/990,723 :
Filed: November 21, 2001 : DECISION ON PETITION
For: :
ELECTRICAL CABLE HAVING AN :
ORGANIZED SIGNAL PLACEMENT :
AND ITS PREPARATION :

This is a decision on the Petition to Revive the Application based upon unintentional abandonment, filed July 14, 2005.

The petition is **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due ("Notice"), mailed April 7, 2004. The Notice set a non-extendable statutory period for reply of three (3) months. Accordingly, the application became abandoned on July 8, 2004. A Notice of Abandonment was mailed August 9, 2004.

With the instant petition Applicant has submitted the issue fee.

The Associate Power of Attorney and Change of Correspondence Address have **NOT** been entered and made of record.

Applicant is advised that, effective June 25, 2004, the Associate Power of Attorney practice has been eliminated. The Office no longer accepts Associate Powers of Attorney. See MPEP 402.02; Rev. 3, August 2005.

A courtesy copy of this Decision is being forwarded to Petitioner at the address appearing on the petition; however, all future correspondence will be sent to address of record until instructions to the contrary are received.

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

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

Derek L. Woods
Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: DONALD F. MOFFARD, ESQ.
354A TURNPIKE STREET
SUITE 301A
CANTON, MA 02021-2714

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 5/17/07

TO SPE OF : ART UNIT 1755

SUBJECT : Request for Certificate of Correction on Patent No.: 6831029

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Valerie Jackson

Thank You For Your Assistance

Certificates of Correction Branch
Tel. No. 703-308-9390 ext. 114

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

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

Comments:

J. A. LORENGO
SUPERVISORY PATENT EXAMINER

SPE

1755
Art Unit

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Paper No. 7

Perkins Smith & Cohen
One Beacon Street
30th Floor
Boston, MA 02108

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MAR 2 6 2004

OFFICE OF PETITIONS

In re Application of :
Thomas F. Meurer :
Application No. 09/990,755 :
Filed: November 14, 2001 :
Attorney Docket No. 12922-1 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 1, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed December 5, 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 February 6, 2002.

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

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

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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WASHINGTON, D.C. 2023
www.uspto.g

Paper No. 6

John A. Hudalla
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I Street, N.W.
Washington, DC 20005-3315

MAILED

DEC 0 5 2002

Technology Center 2100

In re Application of:	)	
Terrell JONES et al.	)	
Application No. 09/990,779	)	**DECISION ON REQUEST FOR**
Filed: November 14, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: SYSTEM AND METHOD FOR PROCESSING TRAVEL DATA IN A RELATIONAL DATABASE	)	

This is a decision on the Request To Withdraw from Representation filed November 14, 2002.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request filed November 14, 2002 meets all the requirements. Accordingly the request is **GRANTED**.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

James R. Matthews

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

cc: Guy R. Gosnell, Esq.
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

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JUL 22 2004

Paper No. 13

In re Application of
Heinz Focke *et al*
Application No. 09/990,796
Filed: November 14, 2001
Attorney Docket No. 20605.007US

DECISION ON PETITION

This is a decision on the petition filed by facsimile transmission on June 23, 2004 by which petitioners request withdrawal of the examiner's holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated October 21, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioners allege that the application is not abandoned because a reply to the Office letter in question was actually filed on February 20, 2004, together with a petition for a one month extension of time and the fee for the extension. Petitioners have supported this allegation by furnishing a copy of the reply and a copy of the petition for extension of time. A copy of the transmittal letter for these papers has also been furnished by petitioners, and the transmittal letter has affixed thereto a 37 CFR 1.8(a) certificate of mailing dated February 20, 2004, a date within the period for filing a reply to the Office letter in question, as extended. Based upon this evidence, it is clear that this application is not abandoned. In particular, see 37 CFR 1.8(b). It is also noted that Office financial records confirm receipt of all fees required by the reply and the petition for extension of time.

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 and the petition for extension filed on February 20, 2004. Thereafter, the application will be forwarded to the examiner for action on the reply.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Technoprop Colton, L.L.C.
P.O. box 567685
Atlanta, GA 31156-7685

UNITED STATES PATENT AND TRADEMARK OFFICE

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KENYON & KENYON, LLP (IBM)
333 W. SAN CARLOS STREET
SUITE 600
SAN JOSE CA 95110

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JUN 25 2007

OFFICE OF PETITIONS

In re Application of
Eitan Farchi et al. :
Application No. 09/990,802 : ON PETITION
Filed: November 13, 2001 :
Attorney Docket No: **SVL920010003US1** :

This is a decision on the petition to withdraw the holding of abandonment, filed June 20, 2007, 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 19, 2007, for failure to file a timely response to the decision by the Board of Patent Appeals and Interference, rendered February 16, 2007. Accordingly, a Notice of Abandonment was mailed April 23, 2007. Petitioner asserts that the decision was never received.

The file record discloses that the decision 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 report, wherein receipt of the decision rendered February 16, 2007 would have been filed, had it been received. To further show that the decision rendered February 16, 2007 was not received, petitioner explains that after searching the file jacket 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 decision mailed February 16, 2007, it is apparent that it was not received. The evidence submitted corroborates non-receipt of the decision.

In view of the facts set forth in the petition, it is concluded that the decision 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 2193 for appropriate action on the Request for Reconsideration of the February 16, 2007 Board Decision, filed June 20, 2007 with the instant petition.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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COOLEY GODWARD KRONISH LLP
ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
WASHINGTON DC 20001

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AUG 0 4 2008

OFFICE OF PETITIONS

In re Application of :
Sung :
Application No. 09/990,874 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. GOWL- :
018/00US/306506-2025

This is a decision on the petition, filed March 14, 2008, 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 **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. No additional petition fee is required.

Petitioner states that the instant non-provisional application is the subject of an application filed in a foreign country and 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. A review of the file record shows that a Request to Rescind was filed on March 14, 2008. However, petitioner has not provided the exact filing date of the foreign application. Before a proper determination on the merits of the petition can be decided, petitioner must supply the filing date of the foreign application in a renewed petition under 37 CFR 1.137(b).

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

By mail: Mail Stop PETITION
Commissioner for Patents
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

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
WASHINGTON DC 20001

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SEP 2 6 2008

OFFICE OF PETITIONS

In re Application of	:
Sung	:
Application No. 09/990,874	: ON PETITION
Filed: November 21, 2001	:
Attorney Docket No. GOWL-018/00US/306506-2025	:

This is a decision on the renewed petition, filed September 11, 2008, 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 hereby **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on November 20, 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 indicates that the projected publication date will be determined subsequent to Security Review, accompanies the instant petition.

This application is being directed to Technology Center Art Unit 1652 for further processing.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/990,874	11/21/2001	Wing L. Sung	GOWL-018/00US/ 306506-2025

CONFIRMATION NO. 2196

58249
COOLEY GODWARD KRONISH LLP
ATTN: Patent Group
Suite 1100
777 - 6th Street, NW
WASHINGTON, DC 20001

NONPUBLICATION RESCISSION LETTER

OC000000032262359

Date Mailed: 09/25/2008

Communication Regarding Rescission Of Nonpublication Request and/or Notice of Foreign Filing

Applicant's rescission of the previously-filed nonpublication request and/or notice of foreign filing is acknowledged. The paper has been reflected in the Patent and Trademark Office's (USPTO's) computer records so that the earliest possible projected publication date can be assigned.

The projected publication date is to be determined pending completion of Security Review..

If applicant rescinded the nonpublication request before or on the date of "foreign filing,"[1] then no notice of foreign filing is required.

If applicant foreign filed the application after filing the above application and before filing the rescission, and the rescission did not also include a notice of foreign filing, then a notice of foreign filing (not merely a rescission) is required to be filed within 45 days of the date of foreign filing. See 35 U.S.C. § 122(b)(2)(B)(iii), and Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. § 122(b)(2)(B)(ii)-(iv), 1272 Off. Gaz. Pat. Office 22 (July 1, 2003).

If a notice of foreign filing is required and is not filed within 45 days of the date of foreign filing, then the application becomes abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii). In this situation, applicant should either file a petition to revive or notify the Office that the application is abandoned. See 37 CFR 1.137(f). Any such petition to revive will be forwarded to the Office of Petitions for a decision. Note that the filing of the petition will not operate to stay any period of reply that may be running against the application.

Questions regarding petitions to revive should be directed to the Office of Petitions at (571) 272-3282.

[1] Note, for purpose of this notice, that "foreign filing" means "filing an application directed to the same invention in another country, or under a multilateral international agreement, that requires publication of applications 18 months after filing".

/ambrown/

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 9/990876

Paper No.: —

DATE : 1/19/06

TO SPE OF : ART UNIT 2839

SUBJECT : Request for Certificate of Correction on Patent No 6913478 B1

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Virginia Tolbert

Thank You For Your Assistance

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

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

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

Comments:

THANH-TAM LE
PRIMARY EXAMINER

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
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JAN 28 2010

OFFICE OF PETITIONS

FISH & RICHARDSON PC
PO BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:	
Fallon	:	
Application No. 09/990,909	:	ON PETITION
Filed: November 17, 2001	:	
Attorney Docket No. 25324-0021001	:	

This is in response to petition to revive an unintentionally abandoned application under 37 CFR 1.137(b), filed November 13, 2009.

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

The above-identified application became abandoned for failure to timely file an Appeal Brief. The Office mailed a final action on July 27, 2004, which set a shortened statutory period for reply of three months. Applicant filed a Notice of Appeal on January 27, 2005, made timely by obtaining a three month extension of time. However, as Applicant did not file an Appeal Brief within two months of the Notice of Appeal, the application became abandoned on March 28, 2005. The Office mailed a Notice of Abandonment on January 4, 2006.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted the required reply in the form of a Request for Continued Examination.

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 $1175.00 extension of time fee submitted with the petition was subsequent to the maximum period obtainable for reply (August 27, 2005), this fee has been refunded to petitioner's Deposit Account No. 06-1050.

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

The application is being forwarded to Group Art Unit 1648 for consideration of the RCE, filed November 13, 2009.

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

Cliff Congo
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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MAY 3 1 2002

OFFICE OF PETITIONS

In re Application of :
J. Aaron Bly, David T. Spieldenner, :
Aaron Roth, Patrick O'Brien, :
Andrew F. Suhy, Jr., and :
Brent Parent :
Application No. 09/990.911 :
Filed: November 14, 2001 :
Title: SYSTEM AND METHOD FOR :
DISPOSING OF ASSETS :
:

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

This is a decision on the "Petition Pursuant to 37 CFR §1.47(a) involving the Refusal of a Co-inventor to Execute the Power of Attorney," filed February 19, 2002. This is properly treated as a request to accept a declaration for patent executed by less than all of the inventors pursuant to 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 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on November 14, 2001, without an executed declaration, and naming J. Aaron Bly, David T. Spieldenner, Aaron Roth, Patrick O'Brien, Andrew F. Suhy, Jr., and Brent Parent as joint inventors. In response to a "Notice to File Missing Parts of Application," mailed December 6, 2001, applicant timely filed the instant petition under §1.47(a)(and fee) and late surcharge under §1.16(e). Accompanying the petition were separate declarations executed in combination by inventors Bly, Spieldenner, Roth, and O'Brien on behalf of themselves and on behalf of non-signing inventors Suhy and Parent. Rule 47 applicants assert that status under §1.47(a) is proper because inventors Suhy and Parent refuse to execute the declaration. In support thereof, applicants submit a statement of facts of patent attorney Michael B. Stewart.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in

compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition includes authorization to charge the petition fee[1] and a statement of the last known addresses of non-signing inventors Suhy and Parent. By statement of attorney Stewart with supporting documentary evidence, rule 47 applicants have provided some evidence that non-signing inventors Suhy and Parent have refused to join in the application after having been presented with the application papers. However, the petition is not grantable because further information is required in reference to requirement (1) and the declaration submitted does not satisfy requirement (2).

As to requirement (1), a copy of the letter transmitting the application as filed and the declaration to inventor Suhy was included on petition. A showing of refusal by inventor Suhy is supported by this letter considered in light of attorney Stewart's statement of facts. However, the description of the refusals as set forth in attorney Stewart's statement is not sufficiently detailed. In detailing the circumstances of the refusal, attorney Stewart omitted specifics, such as dates and times of the telephone conversations. This information is required in order to conclude that the showing of refusal as to inventor Suhy has been made.

As for inventor Parent's refusal, for the same reasons, attorney Stewart's statement is not sufficiently detailed. Moreover, the copy of the letter transmitting the application as filed and the declaration to inventor Parent is referred to on petition, but is not present in the application. Submission of this letter with further information on the refusal is required.

As to requirement (2), the declaration is not acceptable. Pursuant to 35 USC 115 and 37 CFR 1.63(a)(3), a declaration must include the citizenship of all inventors, regardless of signing status. The declaration submitted does not include the citizenship of inventors O'Brien, Suhy and Parent. Additionally, the declaration is rendered unacceptable due to non-dated/non-initialized changes to inventor Roth's residence information. Furthermore, §1.63(c) provides that:

> Unless such information is supplied on an application data sheet in accordance with § 1.76, the oath or declaration must also identify:
>
> (1) The mailing address, and the residence if an inventor lives at a location which is different from where the inventor customarily receives mail, of each inventor.

A review of the declaration reveals that it contains the residence, but not the mailing address of each of the inventors. No application data sheets have been submitted in this

---

[1] Both a surcharge under §1.16(e) for late filing of the declaration and a petition fee for acceptance of the declaration under §1.47 are required.

application. For purposes of compliance with §1.63, the data entered as the residence is being construed as both the address where the inventor lives and the address where the inventor customarily receives mail, the mailing address. Applicant **must** notify the Office of Petitions on request for reconsideration if this interpretation is incorrect.

On renewed petition, applicant must correct the deficiencies:

1. Provide further details on the circumstances of the refusal, consistent with the guidance set forth in MPEP 409.03(d)(8th Ed., Rev. Aug. 1, 2001); and

2. Provide a supplemental oath or declaration correcting the deficiencies noted in the declaration of record. See 37 CFR §1.67.

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

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

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

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

Telephone inquiries related to this decision may be directed to 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

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, D.C. 20231
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Paper No. 8

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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SEP 30 2002

OFFICE OF PETITIONS

In re Application of :
J. Aaron Bly, David T. Spieldenner, :
Aaron Roth, Patrick O'Brien, :
Andrew F. Suhy, Jr., and :
Brent Parent :
Application No. 09/990,911 :
Filed: November 14, 2001 :
Title: System and Method for :
Disposing of Assets :

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

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed September 3, 2002 (certificate of mailing August 29, 2002).

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing 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 November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under §1.47. The petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 USC § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002).

The instant request for reconsideration was timely filed with an accompanying request for an extension of time for response within the first month (and extension fee). In support of the request for reconsideration, applicants submitted evidence showing that the entire application package (and not just the declaration, power of attorney and assignment) was sent to both inventor Parent and inventor Suhy. Attorney Stewart further detailed the circumstances of each inventor's refusal. Further, rule 47 applicants provided documentary evidence in the form of copies of

E-mail communications, and relevant FedEx Express delivery information

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or found, after diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. The instant petition does not satisfy requirement (2).

The declaration submitted is not acceptable because it contains non-dated/non-initialed alterations to the declaration as to the information for inventor Suhy. On renewed petition, petitioner must submit a declaration executed by the available joint inventors on behalf of themselves and on behalf of nonsigning inventor Suhy without such alterations.

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

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

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

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

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

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 11

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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OCT 2 1 2002

OFFICE OF PETITIONS

In re Application of :
J. Aaron Bly, David T. Spieldenner, :
Aaron Roth, Patrick O'Brien, :
Andrew F. Suhy, Jr., and :
Brent Parent :
Application No. 09/990,911 :
Filed: November 14, 2001 :
Title: System and Method for :
Disposing of Assets :

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

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed by facsimile transmission on October 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 deficiency. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(a)," and should only address the deficiency 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 C.F.R. § 1.136(a).

The above-identified application was filed on November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under §1.47. The petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002).

A request for reconsideration was filed on September 3, 2002. However, this renewed petition was dismissed for failure to submit an acceptable declaration. The declaration submitted contained non-dated/non-initialed alterations as to the information for inventor Suhy (Decision mailed September 30, 2002). On instant renewed petition, timely filed, petitioner submitted another declaration. A review of this declaration reveals that it also is not acceptable. Petitioner cured the deficiency as to the alterations. However, petitioner then omitted the citizenship information for both inventors Suhy and

Parent. This information is required by statute, pursuant to 35 U.S.C. § 115, and thus, cannot be waived.

An acceptable declaration in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 is still required.

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

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

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

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

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

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 14

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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NOV 1 9 2002

OFFICE OF PETITIONS

In re Application of J. Aaron Bly, David T. Spieldenner, Aaron Roth, Patrick O'Brien, Andrew F. Suhy, Jr., and Brent Parent Application No. 09/990,911 Filed: November 14, 2001 Title: System and Method for Disposing of Assets	DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(a)

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed by facsimile transmission on November 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 deficiency. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(a)," and should only address the deficiency 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 C.F.R. § 1.136(a).

The above-identified application was filed on November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under §1.47. The petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002).

A request for reconsideration was filed on September 3, 2002. However, this renewed petition was dismissed for failure to submit an acceptable declaration. The declaration submitted contained non-dated/non-initialed alterations as to the information for inventor Suhy (Decision mailed September 30, 2002). A second renewed petition and new declaration were timely filed on October 11, 2002. However, this declaration was not acceptable because the citizenship information for both inventors

Suhy and Parent was omitted. Petitioner was advised that an acceptable declaration in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 was still required (October 21, 2002).

On third renewed petition filed November 11, 2002, petitioner resubmitted the declaration filed October 11, 2002. This declaration was altered to include the citizenship information for inventors Suhy and Parent. Because of these non-dated/non-initialed alterations to the declaration, the declaration filed November 11, 2002, is not acceptable.

Accordingly, a new declaration is still required. It is highly recommended that petitioner submit on renewed petition a clean 1.47 declaration, one with all alterations encompassed prior to signing by the available joint 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
ATTN: NANCY JOHNSON

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

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

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 18

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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JUL 2 3 2003

OFFICE OF PETITIONS

In re Application of J. Aaron Bly, David T. Spieldenner, Aaron Roth, Patrick O'Brien, Andrew F. Suhy, Jr., and Brent Parent Application No. 09/990,911 Filed: November 14, 2001 Title: System and Method for Disposing of Assets	DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(a)

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed by facsimile transmission on January 14, 2003. The application file with the renewed petition was recently forwarded to the undersigned for consideration of this petition.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiency. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(a)," and should only address the deficiency 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 C.F.R. § 1.136(a).

The above-identified application was filed on November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under § 1.47. The petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002).

A request for reconsideration was filed on September 3, 2002. However, this renewed petition was dismissed for failure to submit an acceptable declaration. The declaration submitted contained non-dated/non-initialed alterations as to the information for inventor Suhy (Decision mailed September 30,

information for inventor Suhy (Decision mailed September 30, 2002). A second request for reconsideration filed October 11, 2002, was dismissed because petitioner on revised declarations omitted the citizenship information for both inventors Suhy and Parent (Decision mailed October 21, 2002). A third request for reconsideration filed November 11, 2002, was dismissed because the declaration was amended to include the citizenship information for inventors Suhy and Parent, and these alterations were not initialed (Decision mailed November 19, 2002).

It was highly recommended in the dismissal mailed November 19, 2002, that applicants submit a clean declaration encompassing all alterations and then, executed by the available joint inventors on behalf of themselves and on behalf of the non-signing inventors. However, on instant renewed petition, applicants submitted the signature page for the declaration with alterations to the citizenship information for inventors Suhy and Parent now initialed. This is not acceptable.

The paper submitted is not acceptable because it is merely a signature page and not a declaration in compliance with § 1.63; and it clearly violates the rule that a declaration may not be amended after execution. See 37 CFR 1.52(c). This paper appears to be the same signature page previously submitted, but with additional initialed alterations. Petitioner has now submitted a signature page signed by two inventors on October 31, 2001; amended by one inventor on July 29, 2002; amended on August 2, 2002, as to address information by an inventor who originally signed on October 31, 2001; and amended as to citizenship information for the non-signing inventors on December 13, 2002. These alterations do not reflect the situation where an inventor corrects his information, initials and dates the change and then executes the declaration (i.e., See signature block of inventor Roth originally signed October 31, 2001 with alterations to his address made and initialed on August 2, 2002). The execution and amendment of this declaration is clearly in violation of the rule that a declaration may not be amended after execution. See 37 CFR 1.52(c). The undersigned apologizes if this rule was not made abundantly clear in the previous dismissals.

A **new** declaration is required.

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

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

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

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

Telephone inquiries related 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

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ALEXANDRIA, VA 22313-1450
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Paper No. 22

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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OCT 2 9 2003

OFFICE OF PETITIONS

In re Application of J. Aaron Bly, David T. Spieldenner, Aaron Roth, Patrick O'Brien, Andrew F. Suhy, Jr., and Brent Parent Application No. 09/990,911 Filed: November 14, 2001 Title: System and Method for Disposing of Assets	DECISION REFUSING STATUS UNDER 37 C.F.R. §1.47(a)

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed by facsimile transmission on October 22, 2003.

The petition is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiency. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. § 1.47(a)," and should only address the deficiency 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 C.F.R. § 1.136(a).

The above-identified application was filed on November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under § 1.47.

The initial petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002). Subsequent requests for reconsideration were dismissed for failure to submit an acceptable declaration (Decisions mailed September 30, 2002; October 21, 2002; November 19, 2002; and July 23, 2003).

On instant request for reconsideration, rule 47 applicants filed a declaration executed by inventors Bly, Spieldenner, Roth and

O'Brien on behalf of themselves and on behalf of non-signing inventors Suhy and Parent. This new declaration did not, as requested, encompass all alterations and requirements previously set forth on decision on petition. Specifically, the declaration did not include the residence/mailing address and statutorily required citizenship for non-signing inventors Suhy and Parent (See, for example, Decision on Petition mailed October 21, 2002).

In view thereof, the petition must be dismissed.

A **new** declaration is required.

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

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

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

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

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 26

RADER, FISHMAN & GRAUER PLLC
39533 WOODWARD AVENUE
SUITE 140
BLOOMFIELD HILLS, MI 48304-0610

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JAN 15 2004

OFFICE OF PETITIONS

In re Application of :
J. Aaron Bly, David T. Spieldenner, :
Aaron Roth, Patrick O'Brien, :
Andrew F. Suhy, Jr., and :
Brent Parent :
Application No. 09/990,911 :
Filed: November 14, 2001 :
Title: System and Method for :
Disposing of Assets :

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

This is in response to the "Response to Decision Refusing Status under 37 CFR 1.47(a)," filed by facsimile transmission on December 29, 2003.

The petition is **GRANTED**.

The above-identified application was filed on November 14, 2001, without an executed oath or declaration. J. Aaron Bly, David Spieldenner, Aaron Roth, Patrick O'Brien, Andrew Suhy, Jr., and Brent Parent were named as joint inventors. In reply to the "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," mailed December 6, 2001, applicants timely filed the initial petition under § 1.47.

The initial petition was dismissed for failure to provide proof that non-signing inventors Suhy and Parent refused to sign the Declaration after having been presented with the application papers and because the declaration was not in compliance with 35 U.S.C. § 115 and 37 CFR § 1.63 (Decision mailed May 31, 2002). Subsequent requests for reconsideration were dismissed for failure to submit an acceptable declaration (Decisions mailed September 30, 2002; October 21, 2002; November 19, 2002; July 23, 2003; and October 29, 2003).

On instant request for reconsideration, rule 47 applicants filed a declaration executed by inventors Bly, Spieldenner, Roth and O'Brien on behalf of themselves and on behalf of non-signing inventors Suhy and Parent. This declaration has been reviewed and is found acceptable. Petitioner has now met all requirements for a grantable petition under § 1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the

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

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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COMMISSIONER FOR PATENTS
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Paper No. 27

Rader Fishman & Grauer PLLC
Suite 140
39533 Woodward Avenue
Bloomfield Hills, MI 48304

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MAR 29 2004

OFFICE OF PETITIONS

In re Application of Bly et al. Application No. 09/990,911 Filed: November 14, 2001 Attorney Docket No. 65678-0042	DECISION ON PETITION UNDER 37 CFR 1.137(b)

This is in response to the "SUPPLEMENT TO EARLIER FILED REQUEST TO RESCIND PREVIOUS NONPUBLICATION REQUEST AND PROVISIONAL PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT," filed November 28, 2003. This paper is being treated under 37 CFR 1.137(b), pursuant to 37 CFR 1.137(f).

The petition is **DISMISSED AS MOOT**.

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

Petitioner requests that the above-identified application be revived pursuant to § 1.137(b) and § 1.137(f). Petitioner states that the instant application is the subject of a subsequently-filed foreign or international application[1]. Moreover, 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[2].

However, a review of the application as filed does not reveal that a nonpublication request was submitted on filing of this application. No Request and Certification under 35 U.S.C. 122(b)(2)(B)(i) is present in the application. Accordingly, the instant application is not subject to becoming abandoned for failure to notify the Office within 45 days subsequent to the filing of a foreign or international application requiring publication.

---

[1] PCT/US02/36603 was filed on November 14, 2002.

[2] A request to rescind previous nonpublication request was received in the Office on December 30, 2002; however, it was not accompanied by a Notice of Foreign Filing.

In fact, this application was published on June 20, 2002.

In view of the fact that this application is not abandoned, the request for revival pursuant to § 1.137(b) and § 1.137(f) is moot.

The application is being forwarded to Technology Center 3621 for examination in due course.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

JOSEPH A. WILLIAMS JR.
MARSHALL GERSTEIN MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 60606-6402

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APR 29 2002

OFFICE OF PETITIONS

In re Application of
Carl Alexander Kamb et al
Application No. 09/990,912
Filed: November 16, 2001
For: B-CATENIN ASSAYS, AND COMPOSITIONS THEREFROM

DECISION GRANTING STATUS UNDER 37 CFR 1.47(A)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed March 5, 2002, and supplemented on April 23, 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(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.

Telephone inquiries regarding this decision should be directed to Petitions Examiner Wan Laymon at (703) 306-5685.

This application is being forwarded to Initial Patent Examination Division for preexamination processing.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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SANGHEE YOO
4249 NOBEL DRIVE
SAN DIEGO, CA 92122

COPY MAILED

APR 29 2002

OFFICE OF PETITIONS

In re Application of
Kamb; Yoo; Garcia-Guzman; and Pierce
Application No. 09/990,912
Filed: November 16, 2001
For: B-CATENIN ASSAYS, AND COMPOSITIONS THEREFROM

Dear Mr. Yoo:

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:
JOSEPH A WILLIAMS JR
MARSHALL GERSTEIN MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 60606-6402

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WASHINGTON, D.C. 20231
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MIGUEL GARCIA-GUZMAN
4076 CARMEL SPRINGS WAY
SAN DIEGO, CA 92130

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APR 29 2002

OFFICE OF PETITIONS

In re Application of
Kamb; Yoo; Garcia-Guzman; and Pierce
Application No. 09/990,912
Filed: November 16, 2001
For: B-CATENIN ASSAYS, AND COMPOSITIONS THEREFROM

Dear Mr. Garcia-Guzman:

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:
JOSEPH A WILLIAMS JR
MARSHALL GERSTEIN MURRAY & BORUN
6300 SEARS TOWER
233 SOUTH WACKER DRIVE
CHICAGO, IL 60606-6402

UNITED STATES PATENT AND TRADEMARK OFFICE

JAN 14 2004

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ALEXANDRIA, VA 22313-1450
www.uspto.gov

McANDREWS, HELD & MALLOY, LTD.
34th Floor
500 W. Madison Street
Chicago IL 60661

#9

In re Application of	:	
Gregory L. Heacock	:	NOTICE OF WITHDRAWAL
Serial No.: 09/990,934	:	FROM ISSUE
Filed: November 16, 2001	:	UNDER 37 CFR 1.313(b)
For: Disposable Ophthalmic lens	:	

The above-identified application is withdrawn from issue after payment of the issue fee due to unpatentability of one or more claims. See 37 CFR 1.313(b)(3).

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 John E. Kittle at (703) 308-0873.

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

John E. Kittle
Director
Technology Center 3700/2900

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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LAW OFFICES OF MARK L. BERRIER
3811 BEE CAVES ROAD
SUITE 204
AUSTIN TX 78746

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MAR 1 2 2007

OFFICE OF PETITIONS

In re Application of
PAUL V. MORINVILLE
Application No. 09/990,954
Filed: November 21, 2001
Attorney Docket No. 104322.147US4

DECISION ON PETITION
UNDER 37 CFR 1.182

This is a decision on the petition filed on January 24, 2007 under 37 CFR 1.182 to obtain an issuance of a Notice of Allowance and/or under 37 CFR 1.102 to make the application special based on infringement.

The petition is **DISMISSED AS MOOT** in view of the request to withdraw the petition.

Applicant requested the withdrawal of the petition filed on January 24, 2007 in the remarks section of the amendment filed on March 8, 2007. Accordingly, the USPTO will not take any further action on the petition filed on January 24, 2007. The $130 fee has been refunded to petitioner's deposit account as authorized.

Telephone inquiries concerning this decision should be directed to Amelia Au at (571) 272-7414.

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

The application file is being referred to Technology Center Art Unit 2164 for appropriate action.

Amella Au
Petitions Examiner
Office of Petitions

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 10

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

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JUN 0 3 2003

OFFICE OF PETITIONS

In re Application of :
Andreas Himmler :
Application No. 09/990,966 : ON PETITION
Filed: November 16, 2001 :
Attorney Docket No. 112740-377 :

This is a decision on the petition under 37 CFR 1.137(b), filed May 23, 2003, 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 July 23, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight October 23, 2002.

The petition is **GRANTED**.

The application is being forwarded to Technology Center 2800, for review of the amendment filed with the instant petition, in response to the non-final office action.

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

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

UNITED STATES
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Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Washington, DC 20231
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Mailed: 10/21/04

spg
Paper Number ____

In re application of
Anita Marten
Serial No. 09/991,022
Filed: November 21, 2001
For: INITIAL SOLIDS MIXTURE FOR A LATER ORGANIC COATING APPLICATION

DECISION ON PETITION

This is a response to the PETITION FOR WITHDRAWAL OF ERRONEOUS ABANDONMENT HOLDING, filed August 12, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of July 01, 2004 for failure to file a proper Request for Continued Examination("RCE") be withdrawn since the applicants did timely file a REQUEST FOR CONTINUED EXAMINATION (RCE) and an AMENDMENT on April 12, 2004 along with the required fee.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that the REQUEST FOR CONTINUED EXAMINATION (RCE) and the AMENDMENT were properly filed on April 12, 2004 as evidenced by the properly completed Request for Continued Examination filed April 12, 2004 in that 1)prosecution on the merits is closed as evidenced by the FINAL action mailed October 10, 2003, 2)applicants filed a submission under 37 C.F.R. 1.114 with the Request for Continued Examination as evidenced by the accompanying amendment filed April 12, 2004 and 3) that applicants had paid the fee set forth under 37 C.F.R. 1.17(e). To properly meet the requirements of 37 C.F.R 1.114., the submission must satisfy the requirements of 37 C.F.R. 1.111 when the submission is a reply to an Office action under 35 U.S.C. 132(see 37 C.F.R. 1.114(b)). Consistent with the requirements of 37 C.F.R. 1.111, the amendment filed April 04, 2004 appears to be a *bona fide* attempt by applicant to advance prosecution in that the amendment was in writing and specifically and distinctly pointed out the errors in the examiner's action and replied to every ground of objection and rejection in the FINAL office action mailed October 10, 2003 as evidenced in the amendment at pages 4-6 wherein applicant addressed the 35 USC 112 first and second paragraph rejections, restriction requirement by original presentation. Thus applicant has fulfilled the requirements of 37 C.F. R. 1.111 and met the submission requirement of 37 C.F.R. 1.114.

Furthermore, Section 706.07(h)(VI) further states that one situation where a submission is not a fully responsive submission, but is a bona fide attempt to provide a complete reply" is presentation of claims for (a) different invention." In this regard, M.P.E.P. j 706.07(h)(VI) states that if an RCE is filed with an amendment canceling all claims drawn to the elected invention and presenting only claims drawn to a nonelected invention, the RCE should be treated as proper but the amendment should not be entered and that the amendment is not fully responsive and applicant should be given a time period of one month or thirty days (whichever is longer) to submit a complete reply. This practice is consistent with 37 C.F.R. 1.135(c) and 1.145 and with the procedure outlined in M.P.E.P. 821.03, which section is referred to by M.P.E.P. 706.07(h)(VI). Accordingly, even if the Amendment submitted with the RCE is considered to present claims that are independent and distinct from the claims previously claimed , it would have been proper for the Office to provide Applicant with an opportunity to submit a complete reply, to seek reconsideration under 37 C.F.R. 1.143 and/or to petition to the Director under 37 C.F.R. 1.144 rather than to hold the present application abandoned. Accordingly, the holding of the present application

abandoned was improper and in direct contravention to the procedures specifically outlined in M.P.E.P. 706.07(h)(VI) and 821.03.

Accordingly, any holding of abandonment for failure to file a proper REQUEST FOR CONTINUED EXAMINATION is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for processing and consideration of the REQUEST FOR CONTINUED EXAMINATION (RCE) and the AMENDMENT originally filed April 12, 2004.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

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

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United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 9

BRINKS HOFER GILSON & LIONE
P O BOX 10395
CHICAGO, IL 60611

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JAN 3 0 2003

OFFICE OF PETITIONS

In re Application of
Tomohiro Ohzuru et al
Application No. 09/991,066
Filed: November 9, 2001
Attorney Docket No. 50404-11

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 13, 2002, to accept an unintentionally delayed claim under 35 U.S.C. § 365 for the benefit of a prior-filed international application.

The petition is **DISMISSED** as moot.

Petitioner seeks acceptance of an unintentionally delayed claim under 37 CFR 1.78(a)(3) because the Preliminary Amendment dated March 8, 2002, inadvertently omitted the statement required by 37 CFR 1.78(a)(2) regarding publication of an international application.

Effective December 28, 2001, 37 CFR 1.78(a)(2) was amended to eliminate the requirement that, 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. The Office is eliminating this requirement because: (1) The Office will not delay publication of the application if this requirement is not met; and (2) this information can be obtained from other sources. Note 66 *Fed. Reg.* 67088 (Dec. 28, 2001), a copy of which accompanies this decision on petition. For the above reasons, the petition under 37 CFR 1.78(a)(3) is dismissed as involving a moot issue.

In view of the above, the $1,280 fee submitted for the petition under 37 CFR 1.78(a)(3) is unnecessary. Accordingly, the $1,280 petition fee submitted will be credited to Deposit Account No. 23-1925 as authorized.

Any inquiries concerning this decision may be directed to Karen Creasy at (703) 305-8859).

This application is being forwarded to Technology Center AU 1733 for examination in due course and for consideration by the Examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 365 to the prior-filed international application(s).

Frances Hicks

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

ATTACHMENT: Copy of 66 *Fed. Reg.* 67088 (Dec. 28, 2001).

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. Box 1450
Alexandria, VA 22313-1450
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DIGEO, INC
C/O STOEL RIVES LLP
201 SOUTH MAIN STREET, SUITE
1100
ONE UTAH CENTER
SALT LAKE, CITY UT 84111

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SEP 19 2005

OFFICE OF PETITIONS

In re Application of

Snow, et al. :

Application No. 09/991,088

: DECISION ON PETITION

Filed: November 13, 2001

:

Attorney Docket No. 04259P072

This is a decision on the petition under 37 CFR 1.137(b), filed July 12, 2005, 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 29, 2004, 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 July 30, 2004. A Notice of Abandonment was mailed on December 1, 2004.

The amendment filed July 12, 2005, is noted.

The application is being forwarded to Technology Center 2600, GAU 2652 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

NOV - 1 2004

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 17

In re Application of	:	
William Alfond *et al*	:	DECISION ON PETITION
Application No. 09/991,101	:	
Filed: November 21, 2001	:	
Attorney Docket No. 03822-P0173A GSW/DC	:	

This is a decision on the petition filed by on October 1, 2004 by which petitioners are requesting withdrawal of the holding that this application stands abandoned for failure to file a timely and proper reply to the Office letter dated September 10, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

The record shows that a revocation of power of attorney and a change of correspondence address was filed on May 21, 2003, and accepted. However, the Notice of Acceptance was mailed to an erroneous correspondence address, as was the Office letter in question. It is clear, as alleged by petitioners, that petitioners did not receive the Office letter in question.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. This application is being forwarded to the Head Supervisory Applications Examiner to change the power of attorney and correspondence address to agree precisely with the information set forth in paper No. 11, the revocation and power of attorney filed o May 21, 2003. Thereafter, the Office letter dated September 10, 2003, will be re-mailed, together with all attachments thereto. The date for filing a reply to the re-mailed Office letter will run three months from the date of the re-mailing, subject to extensions of time under 37 CFR 1.136(a). Failure to file a timely reply will result in abandonment. In no case may the time for reply be extended to run more than six months from the date of re-mailing. See 35 USC § 133.

PETITION GRANTED.

E. Rollins-Cross, Director
Technology Center 3700

Gene S. Winter
St. Onge Steward Johnston & Reens LLC
986 Bedford Street
Stamford, CT 06905-5619

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

Leah Sherry
DECHERT LLP
P.O. Box 10004
Palo Alto, CA 94303-0961

MAILED

DEC 24 2003

Technology Center 2100

In re Application of:	)	
Burrows et al.	)	
Application No. 09/991,108	)	**DECISION ON REQUEST FOR**
Filed: November 16, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: METHOD AND SYSTEM FOR LIMITING THE IMPACT OF UNDESIRABLE BEHAVIOR OF COMPUTERS ON A SHARED DATA NETWORK	)	

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

for 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.

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

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APR 17 2008

OFFICE OF PETITIONS

In re Application of	:	
Burrows et al.	:	DECISION ON
Application No. 09/991,108	:	PETITION
Filed: January 11, 2002	:	
Attorney Docket No. TA-00418	:	

This is a decision on the PETITION Under 37 C.F.R. §1.137(b) for Revival of Abandoned Application 09/991,108 due to Unintentional Delay filed December 21, 2007.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to pay the Issue Fee and Publication Fee within three months of the mailing date, June 19, 2007, of the Notice of Allowance and Fee(s) Due. This Office action set a three-month nonextendable statutory period for reply. No reply having been received, the above-identified application became abandoned on September 20, 2007. A courtesy Notice of Abandonment was mailed on October 16, 2007.

The petition included the required reply[1] in the form of payment of the Issue Fee and Publication Fee; payment of the petition fee set forth in 37 CFR § 1.17(m); and the required statement of unintentional delay. No terminal disclaimer is required.

It is concluded that all requirements of 37 CFR 1.137(b) have been met.

[1] There was no distinct but concurrent requirement for new drawings.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded for processing into a patent.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
P.O. BOX 1995
VIENNA, VA 22183

Mail Date: 04/21/2010

Applicant	: Arnab Das	: DECISION ON REQUEST FOR
Patent Number	: 7573942	: RECALCULATION of PATENT
Issue Date	: 08/11/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/991,111	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/16/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **2096** 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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ADVANTEDGE LAW GROUP, LLC
922 W. Baxter Dr.
Suite 100
South Jordan, UT 84095

Mail Date: 04/20/2010

Applicant	: Ethan George Russell	: DECISION ON REQUEST FOR
Patent Number	: 7600014	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/991,127	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/14/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1222** 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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THORNE & HALAJIAN, LLP
APPLIED TECHNOLOGY CENTER
111 WEST MAIN STREET
BAY SHORE, NY 11706

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OFFICE OF PETITIONS

In re Application of
Gregory Robert Roelofs
Application No. 09/991,141
Filed: November 16, 2001
Attorney Docket No.: US018189

ON PETITION

This is a decision on the petition filed August 24, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the non-Final Office Action mailed July 12, 2004. A shortened statutory period of three months was set for replying to the non-Final Office Action. No extensions of time having been requested, this application became abandoned October 13, 2004. Accordingly, a Notice of Abandonment was mailed March 8, 2005.

This matter is being referred to Technology Center 2174 for appropriate action on the amendment filed August 24, 2005.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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

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

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

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

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

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Technology Center 2100

Paper No. 3

PATTON BOGGS
P.O. Box 270930
Louisville, CO 80027

In re Application of:	)	
Steven R. Fletcher, et al.	)	
Application No. 09/991,156	)	
Filed: November 15, 2001	)	**DECISION ON REQUEST FOR**
For: INTEGRATION MESSAGING	)	**WITHDRAWAL AS ATTORNEY**
SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed February 4, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. **The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others**. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is signed by Phyllis K. Wood alone and does not contain a clear indication that Ms. Wood is authorized to sign on behalf of the other attorneys of record and is signing on behalf of the other attorneys of record.

Accordingly, the request is **DENIED**.

All future communications from the United States Patent and Trademark Office (Office) will continue to be directed to the above-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Office of any change in correspondence address to ensure receipt of all communications from the Office.

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

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FEB 27 2003

Technology Center 2100

Paper No. 3

Refile for 4/15/03
NJT
PKW

PATTON BOGGS
P.O. Box 270930
Louisville, CO 80027

In re Application of:	)	
Steven R. Fletcher, et al.	)	
Application No. 09/991,156	)	
Filed: November 15, 2001	)	**DECISION ON REQUEST FOR**
For: INTEGRATION MESSAGING	)	**WITHDRAWAL AS ATTORNEY**
SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed February 4, 2003.

A grantable request to withdraw as attorney of record should indicate thereon the present mailing addresses of the attorney(s) who is/are withdrawing from the record and of the applicant. **The request for withdrawal must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others.** A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1. 136(a). The effective date of withdrawal being the date of decision and not the date of request. See M.P.E.P. § 402.06. 37 C.F.R. § 1.36 further requires that the applicant or patent owner be notified of the withdrawal of the attorney or agent.

The request is signed by Phyllis K. Wood alone and does not contain a clear indication that Ms. Wood is authorized to sign on behalf of the other attorneys of record and is signing on behalf of the other attorneys of record.

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.

Received from < 3033791155 > at 3/7/03 2:44:30 PM [Eastern Standard Time]

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

Received from < 3033791155 > at 3/7/03 2:44:30 PM [Eastern Standard Time]

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Paper No. 5

Phyllis K. Wood
PATTON BOGGS
P.O. Box 270930
Louisville, CO 80027

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APR 2 9 2003

Technology Center 2100

In re Application of:	)	
Steven R. Fletcher, et al.	)	
Application No. 09/991,156	)	**DECISION ON REQUEST FOR**
Filed: November 15, 2001	)	**WITHDRAWAL AS ATTORNEY**
For: INTEGRATION MESSAGING SYSTEM	)	

This is a decision on the Request To Withdraw from Representation filed March 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 March 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

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

cc: GLOBAL ESOFT, INC.
31728 Rancho Viejo Road
Suite 101
San Juan Capistrano, CA 92675

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HELLER EHRMAN LLP
275 MIDDLEFIELD ROAD
MENLO PARK CA 94025-3506

In re Patent No. 7,101,687 DESNOYERS ET AL	:	
Issue Date: September 5, 2006	:	**DECISION GRANTING**
Appl No.: 09/991,157	:	**PETITION**
Filed: November 16, 2001	:	*37 CFR 1.324*
For: Correction of Inventorship	:	
	:	
	:	
	:	

This is a decision on the petition under 37 CFR 1.48(a) which is being treated as a petition to correct inventorship under 37 CFR 1.324, filed October 17, 2006. The newly signed declaration by the previously named inventors is taken as a statement that the inventors have no objection to the correction of inventorship.

The petition is **GRANTED**.

The patented file is being forwarded to Certificate of Corrections Branch for issuance of a certificate naming only the actual inventor or inventors.

William R. Dixon, Jr
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

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NOV 14 2005

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD, CT 06905

Paper No. 9

In re Application of
PACKES ET AL.
Appl No.: 09/991,168
Filed: November 14, 2001
For: DEVICE AND METHOD FOR PROVIDING PAYOUTS BASED ON ACTIVITY AND RANKS OF OTHER GAMING SESSIONS
Attorney Docket Number: 01-040

DECISION GRANTING PETITION
37 CFR 1.181

This application is before the Director of Technology Center 3700 for reconsideration of the Notice of Abandonment mailed June 1, 2004 for failure to timely reply to the office action mailed October 6, 2003. In view of petitioner's statements in the petition received June 21, 2004, the request is treated as a petition to withdraw of the holding of abandonment pursuant to 37 CFR 1.181 based on non-receipt of the office action. No fee is required for this petition.

The petition is granted.

In support of the request, petitioner has provided a showing of non-receipt of the Office action in accordance with MPEP 711.03(c)IA.

In view of the above, the Notice of Abandonment mailed June 1, 2004 is hereby vacated and the holding of abandonment is withdrawn. The application will be forwarded to the Technical Support Staff to return the application to an active status and to remail the office action. The statutory period that was originally set forth in the Office communication will be restarted to run from the mail date of the newly supplied office action.

Richard A. Bertsch, Director
Technology Center 3700

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Paper No. 9

Richard J. Rodrick
Becton, Dickinson & Company
1 Becton Drive
Franklin Lakes, NJ 07417

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OFFICE OF PETITIONS

In re Application of
Minh Q. Hoang, et. al.
Application No. 09/991,180
Filed: November 16, 2001
Attorney Docket No. P-4980P1

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on April 22, 2003, 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 August 13, 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 after midnight November 13, 2002.

The petition is **GRANTED**.

The application is being forwarded to Technology Center 1700.

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

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

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OFFICE OF PETITIONS

NOVARTIS
CORPORATE INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
EAST HANOVER NJ 07936-1080

In re Patent No. 7,151,106	:
Issued: December 19, 2006	: DECISION ON APPLICATION FOR
Application No. 09/991,184	: PTA and NOTICE OF INTENT
Filed: November 16, 2001	: TO ISSUE CERTIFICATE OF
Atty. Dkt. No.: 4-30096B/C1	: CORRECTION

This decision is in response to the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 C.F.R. §1.705(d)," filed January 22, 2007.

The request for reconsideration of patent term adjustment is **GRANTED**.

The above-identified application matured into U.S. Patent No. 7,151,106 on December 19, 2006. The instant request for reconsideration was timely filed January 22, 2007 in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 261 days. Applicants argue that the correct adjustment is 286 days and that the reduction of 25 days is in error.

The PALM database contains an entry of "WORKFLOW - DRAWINGS FINISHED" on September 19, 2006. This entry resulted in a reduction of 25 days that patentee argues is in error. Patentee further indicates that no drawings submitted on September 19, 2006.

Patentee's arguments have been carefully considered and found convincing. A review of the official record does not reveal that drawings were submitted on September 19, 2006. Accordingly, the 25 day reduction was errantly entered.

In view thereof, the patent is entitled to an adjustment of 286 days (or, an adjustment 463 days minus a reduction of 177 days) as argued by patentee.

Receipt is hereby acknowledged of the required $200.00 patent term adjustment application fee.

This application file will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 286 days.

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

Kery A. Fries

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

CC: Draft Certificate of Correction
Adjusted Pate Calculation

Day : Wednesday

PALM INTRANET

Date: 5/2/2007
Time: 14:09:55

PTA Calculations for Application: 09/991184			
Application Filing Date:	11/16/2001	PTO Delay (PTO):	463
Issue Date of Patent:	12/19/2006	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	202
Post-Issue Petitions:	0	Total PTA (days):	286
PTO Delay Adjustment:	25		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
96	05/02/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	25		
92.5	11/29/2006	PTA 36 MONTHS			
92	12/19/2006	PATENT ISSUE DATE USED IN PTA CALCULATION			
91	10/13/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
90	10/06/2006	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
89	09/28/2006	RECEIPT INTO PUBS			
88	09/28/2006	RECEIPT INTO PUBS			
87	09/27/2006	DISPATCH TO FDC			
86	09/27/2006	APPLICATION IS CONSIDERED READY FOR ISSUE			
85	09/19/2006	ISSUE FEE PAYMENT VERIFIED			
84	09/19/2006	WORKFLOW - DRAWINGS FINISHED		25	91
83	09/19/2006	ISSUE FEE PAYMENT VERIFIED			
82	09/19/2006	ISSUE FEE PAYMENT RECEIVED			
79	07/31/2006	RECEIPT INTO PUBS			
78	07/31/2006	RECEIPT INTO PUBS			
77	07/28/2006	RECEIPT INTO PUBS			
76	07/10/2006	EXPORT TO INITIAL DATA CAPTURE			
75	07/05/2006	MAIL NOTICE OF ALLOWANCE			
74	07/05/2006	MAIL FORMAL DRAWINGS REQUIRED	143		54
73	06/28/2006	ISSUE REVISION COMPLETED			
72	06/26/2006	FORMAL DRAWINGS REQUIRED			
71	06/26/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			

70	06/26/2006	NOTICE OF ALLOWABILITY			
69	06/26/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
68	06/26/2006	RECORD PETITION DECISION OF GRANTED RELATED TO INVENTOR IN APPLICATION			
65	06/26/2006	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
63	12/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
62	12/13/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
60	09/19/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
58	10/12/2005	PETITION ENTERED			
57	10/12/2005	RULE 47 / 48 CORRECTION OF INVENTORSHIP PAPERS FILED			
56	05/17/2005	NEW OR ADDITIONAL DRAWING FILED			
55	10/19/2005	DATE FORWARDED TO EXAMINER			
54	10/12/2005	RESPONSE AFTER EX PARTE QUAYLE ACTION			
53	10/05/2005	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)	119		48
52	10/03/2005	EX PARTE QUAYLE ACTION			
51	02/08/2005	REFERENCE CAPTURE ON IDS			
50	02/08/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
49	08/24/2005	DATE FORWARDED TO EXAMINER			
48	02/08/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)			
47	08/24/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
46	08/20/2005	PUBS CASE REMAND TO TC			
45	07/12/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
44	08/17/2005	RECEIPT INTO PUBS			
43	06/27/2005	RECEIPT INTO PUBS			
42	05/25/2005	RECEIPT INTO PUBS			
41	04/15/2005	WORKFLOW - QUERY REQUEST - FINISH			
40	04/05/2005	WORKFLOW - QUERY REQUEST - BEGIN			
39	02/08/2005	WORKFLOW INCOMING AMENDMENT IFW			
38	02/08/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
37	12/28/2004	EXPORT TO INITIAL DATA CAPTURE			

36	01/06/2005	WORKFLOW - FILE SENT TO CONTRACTOR			
35	12/16/2004	MAIL NOTICE OF ALLOWANCE			
34	12/16/2004	MAIL OATH OF DECLARATION REQUIRED			
33	12/16/2004	MAIL EXAMINER'S AMENDMENT			
32	12/13/2004	ISSUE REVISION COMPLETED			
31	12/13/2004	OATH OR DECLARATION REQUIRED			
30	12/13/2004	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
29	12/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
28	12/13/2004	EXAMINER'S AMENDMENT COMMUNICATION			
27	12/13/2004	NOTICE OF ALLOWABILITY			
26	12/13/2004	DATE FORWARDED TO EXAMINER			
25	11/29/2004	RESPONSE AFTER NON-FINAL ACTION		88	22
24	11/29/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	11/29/2004	WORKFLOW INCOMING AMENDMENT IFW			
22	06/02/2004	MAIL NON-FINAL REJECTION	68		15
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20	03/10/2004	CASE DOCKETED TO EXAMINER IN GAU			
19	02/18/2004	IFW AMENDED CASE PROCESSING COMPLETE			
18	01/14/2002	REFERENCE CAPTURE ON IDS			
17	01/14/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	02/18/2004	DATE FORWARDED TO EXAMINER			
15	11/26/2003	RESPONSE TO ELECTION / RESTRICTION FILED		89	13
14	11/26/2003	REQUEST FOR EXTENSION OF TIME - GRANTED			
13	05/29/2003	MAIL RESTRICTION REQUIREMENT	133		-1
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11	01/09/2002	PRELIMINARY AMENDMENT			
10	01/08/2002	PRELIMINARY AMENDMENT			
9	01/14/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	01/08/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	12/13/2001	CASE DOCKETED TO EXAMINER IN GAU			
6	11/16/2001	PRELIMINARY AMENDMENT			
5	12/12/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
4	12/10/2001	APPLICATION DISPATCHED FROM OIPE			
3	12/06/2001	CORRESPONDENCE ADDRESS CHANGE			

2	12/03/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/16/2001	INITIAL EXAM TEAM NN			

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Paper No. 5

FULWIDER PATTON LEE & UTECHT, LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE
TENTH FLOOR
LOS ANGELES, CA 90045

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JUN 1 8 2002

OFFICE OF PETITIONS

In re Application of	:	
Terrence A. Tomkow	:	
Application No. 09/991,201	:	ON PETITION
Filed: February 22, 2002	:	
Attorney Docket No. RPOST-58937	:	

This is a decision on the petition filed February 22, 2002, requesting that the above-identified application be accorded a filing date of February 22, 2002.

The petition is **granted**.

The above-identified application was filed on November 20, 2001. However, on January 17, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)" stating that the application had been accorded a filing date of November 20, 2001, and advising applicants that drawings containing Figures 12, 13 and 14 as described in the specification appeared to have been omitted.

In response, on February 22, 2002, three (3) sheets of drawings containing Figures 12, 13 and 14 and the present petition were filed. The petition is accompanied by a Supplemental Declaration signed by Terrence A. Tomkow, the named Applicant, that states he has, "reviewed and understands the contents of the above-identified application," and that, "the documents in this application specifically include Figures 12-14 of the drawings." Furthermore, the present petition requests the later filing date of Figures 12, 13 and 14.

In view of the above, the application will be processed with a filing date of February 22, 2002, and will incorporate the three (3) sheets of drawings containing Figures 12, 13 and 14, filed February 22, 2002.

This application is being forwarded to the Office of Initial Patent Examination for processing with a filing date of February 22, 2002.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Edward Tannouse at (703) 306-9200.

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

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Paper No. 7

LSI Logic Corporation
1621 Barber Lane
MS: D-106 Legal
Milpitas, CA 95035

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JAN 16 2004

OFFICE OF PETITIONS

In re Application of
Venkatesh P. Gopinath, et. al.
Application No. 09/991,202
Filed: November 14, 2001
Attorney Docket No. 01-555/LSI1P175

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 13, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed January 16, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight March 16, 2002.

In response to the Notice to File Corrected Application Papers, petitioner submitted with the instant petition $1,330 for the petition to revive fee, and four (4) sheets of substitute formal drawings containing figures 1-5. The $1,330 petition fee has been charged, as requested, to petitioner's deposit account.

Since the requirements for a grantable petition have been met, the petition is **GRANTED**.

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

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

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

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

CC: James E. Austin
Beyer Weaver & Thomas, LLP
P.O. Box 778
Berkeley, CA 94704-0778

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P.O. BOX 581415
MINNEAPOLIS MN 55458

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APR 2 8 2003

OFFICE OF PETITIONS

Applicant: Benson
Appl. No.: 09/991,211
Filing Date: November 21, 2001
Title: CRYSTALLIZATION AND STRUCTURE DETERMINATION OF STAPHYLOCOCCUS AUREUS UDP-N-ACETYLENOLPYRUVYLGLUCOSAMINE REDUCTASE (S. AUREUS MURB)
Attorney Docket No.: 6241.N DV1
Pub. No.: US 2002/0156585 A1
Pub. Date: October 24, 2002

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on December 20, 2002.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains an error in claim 50 wherein "a=b=c=178.9 ± 20 Å"is misprinted as "a=b=c=178.9 + 20 Å", which is a material mistake.

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." The instant request does not identify a material mistake in the publication made by the Office:

The instant request identifies a minor typographical error in dependent claim 50 wherein "a=b=c=178.9 ± 20 Å"is misprinted as "a=b=c=178.9 + 20 Å", which is not a material mistake because the technical disclosure and the claims are understandable, as the phrase is correctly spelled in the specification and boundaries are generally set by using the symbol " ±" to indicate that amounts greater and less than the specified amount are within the range.

The typographical error identified by applicant is an Office mistake, but it is not a material mistake as required by 37 CFR 1.221(b). A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1]

The misspelling is a minor typographical error, which is clearly understandable from reading the specification and claims in which the term is used, as words are not read in a vacuum. The error does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.

---

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: 703-305-8568

The application is being forwarded to Technology Center 1600 to await further examination in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

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FISH & NEAVE IP GROUP
ROPES & GRAY LLP
1251 AVENUE OF THE AMERICAS FL C3
NEW YORK, NY 10020-1105

In re Application	:
Slate, et al.	: DECISION ON PETITION
Application No. 09/991,223	:
Filed: November 21, 2001	:
Docket No.: AAA-002	:

This is a decision on the petition under 37 CFR 1.182, filed January 18, 2002.

The petition is **DISMISSED AS MOOT**.

Petitioners herein request entry of 216 sheets of drawings in the publication of the above-identified application.

The instant application published October 10, 2002. Accordingly, the instant petition is moot.

The Office apologizes for the delay in the issuance of the instant decision on petition.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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RICHARD F. TRECARTIN, ESQ.
FLEHR HOHBACH TEST ALBRITTON & HERBERT LLP
Four Embarcadero Center, Suite 3400
San Francisco CA 94111-4187

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APR 22 2005

OFFICE OF PETITIONS

In re Application of	:
Christian, et al.	:
Application No. 09/991,262	: DECISION ON PETITION
Filed: November 20, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. A-58631-5 RFT/THR	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed August 2, 2004 (certificate of mailing date July 28, 2004), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED** with respect to application no. 08/089,372, filed July 8, 1993.

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3), with respect to application no. 08/089,372.

As for application no. 08/440,522, the current procedure where a claim for priority under 37 CFR §§ 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR §§ 1.78(a)(2)(ii). However, on the other hand, if the USPTO does not note the claim for priority to the prior-filed application(s) set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim priority under § 37 CFR 1.78(a)(3).[1] In the instant case, the Office noted the claim for priority of application no. 08/440,522 found on the transmittal letter, as shown by its inclusion in the U.S. Patent Application Publication Related U.S. Application Data section.

In view of the above, a petition under 37 CFR 1.78(a)(3) is unnecessary for application no. 08/440,522.

With respect to application no. 08/089,372, the petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, 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

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

application, accompanies this decision on petition.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs slightly from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

Any inquiries concerning this decision may be directed to the undersigned at (571) 272-3230. 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 1638 for appropriate action on the amendment filed August 2, 2004 (certificate of mailing date July 28, 2004), including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

cc: RICHARD F. TRECARTIN
DORSEY & WHITNEY LLP
FOUR EMBARCADERO CENTER, SUITE 3400
SAN FRANCISCO, CA 94111-4187

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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)
6783541	2004-08-31	09/991,275	2001-11-21	

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

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

◉ The assignee of record of the entire interest

The Assignee of record of the entire interest			
Under 37 CFR 3.71 an assignee becomes of record by filing a statement in compliance with 37 CFR 3.73(b). Signature requirements are set forth in 37 CFR 1.4(d), and the undersigned certifies that he / she is empowered to act on behalf of the assignee of the entire interest			
Signature	/Michael Khoury/	Date (YYYY-MM-DD)	2010-05-10
Name	Michael Khoury		
Enter Reel and Frame Number		Remove	
Reel Number	012323	Frame Number	0847
Click ADD for additional Reel Number and Frame Number		Add	

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

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In re Patent No. 6783541
Issue Date: August 31,2004
Application No. 09991275
Filed: November 21,2001
Attorney Docket No. 120202

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

This is a decision on the electronic petition, filed May 10,2010 ,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 May 10,2010 .
This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

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JAN 0 5 2006

OFFICE OF PETITIONS

In re Application of :
Tomasz Janczak :
Application No. 09/991,281 : ON PETITION
Filed: November 15, 2001 :
Attorney Docket No. **42390P12526** :

This is a decision on the petition under 37 CFR 1.78(a)(6) to accept the unintentionally delayed claim under 35 U.S.C §119(e) for the benefit of priority of the prior-filed provisional application set forth in the amendment filed concurrently with the instant petition.

The petition under 37 CFR 1.78(a)(6) is **GRANTED**.

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. Further, the petition is appropriate only 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 § 119(e) and paragraph (a)(5) of this section to the prior-filed provisional 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 paragraph (a)(5)(ii) of this section and the date the claim was filed was unintentional.

The instant pending application was filed on November 15, 2001, and was pending at the time of the filing of the instant petition. A reference to the prior-filed provisional application has been included in an amendment to the first page of the specification, as required by 37 CFR 1.78(a)(5)(i).

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

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

A corrected filing receipt, which includes the priority claim to the prior-filed provisional application, accompanied this decision on petition.

This matter is being referred to Technology Center 2600, Art Unit 2666, for appropriate action on the amendment filed October 24, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 119(e) to the prior-filed provisional application.

Any inquiries concerning this decision may be directed to Kenya A. McLaughlin, Petitions Attorney, at (571)272-3222.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

Enclosure: Corrected 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

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

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NOV 1 2 2009

OFFICE OF PETITIONS

In re Patent No. 7,072,331	: DECISION ON PETITION AND REQUEST
Issue Date: July 4, 2006	: UNDER 37 CFR §§ 1.78(a)(3) AND 3.81
Application No. 09/991,285	: AND REQUEST FOR CERTIFICATE OF
Filed: November 13, 2001	: CORRECTION
Attorney Docket No. 2205.017US1	:

This is a decision on the petition, filed January 16, 2007, which is being treated as a petition under 37 CFR 1.78(a)(3), seeking to add a claim for priority under 35 U.S.C. § 120 to nonprovisional Application No. 08/934,844, filed September 22, 1997, by way of a certificate of correction. The delay in responding is sincerely regretted.

The instant petition is not signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Timothy B. Clise 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.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed November 13, 2001. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

As the petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is **granted**.

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

Petitioner is advised that the granting of this petition and the mailing of a corrected Filing Receipt should not be viewed as an indication that a determination has been made that this application is entitled to claim benefit of the prior-filed application. A determination that applicant is entitled to claim benefit of the prior-filed application will be made by the Examiner prior to the mailing of a certificate of correction.

In view of the above, the request 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 is **granted**.

Since the petition fee of $1,370 and the processing fee of $130 are required for the petition and request under 37 CFR §§1.78 and 3.81, as authorized, those fees will be charged to petitioner's Deposit Account.

This application is being referred to the Certificates of Correction Branch for processing the request for a certificate of correction in accordance with this decision on the petition and request under 37 CFR §§1.78(a)(3) and 3.81.

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

/Andrea Smith/
Andrea Smith
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
09/991,285	11/13/2001	2616	2546	2205.017US1	71	10

CONFIRMATION NO. 4204

CORRECTED FILING RECEIPT

21186
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. BOX 2938
MINNEAPOLIS, MN 55402

OC000000038708524

Date Mailed: 11/12/2009

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)

Ming-Kang Liu, Cupertino, CA;
Steve Chen, San Jose, CA;
Victor Lee, Cupertino, CA;
Young Way Liu, La Mirada, CA;
Wen Chi Chen, Los Altos, CA;

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 08/934,844 09/22/1997 PAT 6,349,096

Foreign Applications

If Required, Foreign Filing License Granted: 11/30/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 09/991,285**

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

CONFIGURABLE DIGITAL SUBSCRIBER LOOP ACCESS AND END-TO-END DATA AND ANALOG VOICE CONNECTION SYSTEM

Preliminary Class

370

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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DALINA LAW GROUP, P.C.
7910 IVANHOE AVE. #325
LA JOLLA CA 92037

MAILED

JUL 09 2009

OFFICE OF PETITIONS

In re Application of Frigon, Mark Application No. 09/991,324 Filed: November 15, 2001 Attorney Docket No. SAC-P0002	: : : : :	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 2, 2009.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office will require the practitioner(s) to certify that he, she or they have: (1) given reasonable notice to the client, prior to the expiration of the reply period, which the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any replies that may be due and the time frame within which the client must respond, pursuant to 37 CFR 10.40 (c).

The request was signed by Joseph Mayo on behalf of all attorneys of record who are associated with Customer Number 36067. All attorneys/agents associated with the Customer Number 36067 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, Mark Frigon, at the address indicated below.

There is an outstanding Office action mailed June 3, 2009 that requires a reply from the applicant.

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: MARK FRIGON
2140 VALLEJO #4
SAN FRANCISCO, CA 94123

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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ANTHONY NIEWYK, ESQ.
BAKER & DANIELS LLP
SUITE 800
111 EAST WAYNE STREET
FORT WAYNE, IN 46802

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MAY 10 2007

OFFICE OF PETITIONS

In re Application of	:	
Smith, Mathias	:	
Application No. 09/991,333	:	ON PETITION
Filed: November 14, 2001	:	
Attorney Docket No. HER0100	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed February 23, 2007, to revive the above-identified application.

The petition is **GRANTED.**

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

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11,710,636.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3206.

Liana Walsh
Petitions Examiner
Office of Petitions

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

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JAN 1 2 2009

OFFICE OF PETITIONS

In re Application of	:	
Gettemy, et al.	:	
Application No. 09/991,344	:	ON PETITION
Filed: November 20, 2001	:	
Attorney Docket No. PALM-3676	:	

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 26, 2007.

The petition is **GRANTED**.

This application was held abandoned for failure to timely reply to the Notice of Allowance mailed August 13, 2007. This Notice set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on November 14, 2007. The Office mailed a Notice of Abandonment on November 29, 2007.

Petitioner contends that he did timely file a proper response, namely an RCE, on October 24, 2007. In support, petitioner has included a copy of a properly itemized postcard receipt, showing that an "RCE Transmittal" was filed on October 24, 2007. In addition, a review of Office records indicates that the Office received the filing fee for the RCE on October 24, 2007.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, **THE HOLDING OF ABANDONMENT IS WITHDRAWN.**

Given the basis for granting this petition, no petition fee was required. The $130 fee submitted for the petition has been refunded to Deposit Account No. 50-4160.

The matter is being forwarded to Group Art Unit 2629 for consideration of the RCE filed October 24, 2007 (copy supplied on petition filed December 26, 2007).

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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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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
09/991,357	11/20/2001	3754	2704	6954.01	5	43	6

CONFIRMATION NO. 3338

CORRECTED FILING RECEIPT

OC000000013236060

25763
DORSEY & WHITNEY LLP
INTELLECTUAL PROPERTY DEPARTMENT
50 SOUTH SIXTH STREET
MINNEAPOLIS, MN 55402-1498

Date Mailed: 07/14/2004

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 write to the Office of Initial Patent Examination's Filing Receipt Corrections, facsimile number 703-746-9195. 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)

Peter Everett Brooks, Rochester, MN;

Domestic Priority data as claimed by applicant

This appln claims benefit of 60/264,870 01/29/2001

Foreign Applications

If Required, Foreign Filing License Granted: 12/06/2001

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Fluid dispenser

Preliminary Class

222

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

GRANTED

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

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

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Office of Export Administration, Department of Commerce (15 CFR 370.10 (j)); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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Washington, D.C. 20231
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Paper No.5

RONALD COSLICK
FOLEY & LARDNER
SUITE 3500
2029 CENTURY PARK EAST
LOS ANGELES, CA 90067-3021

MAIL

AUG 0 7 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Victor Demjanenko, et al.
Application No.: 09/991,372
Filed: November 13, 2001
For: SYSTEM AND METHOD USING MULTI-DIMENSIONAL CONSTELLATIONS WITH LOW RECEIVER SOFT-DECISION EXTRACTION REQUIREMENTS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request For Permission To Withdraw As Attorneys Of Record filed June 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 listed in the withdrawal filed June 24, 2002 are withdrawn.

All future communications from the Office will be directed to the below-listed address until otherwise notified by applicant. This correspondence address is provided by the withdrawn attorney(s). Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office (Office) of any change in correspondence address to ensure receipt of all communications from the Office.

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

cc: Dr. Victor Demjanenko
VoCal Technologies Ltd.
200 John James Audubon Pkwy.
Buffalo, NY 14228

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Knobbe Martens Olson & Bear LLP
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

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APR 11 2005

OFFICE OF PETITIONS

In re Application of	:	
Mark W. Miles	:	
Application No. 09/991,378	:	DECISION ON PETITION
Filed: November 21, 2001	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 01568-006003		

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 30, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional application(s) set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

Petitioner has met all of the requirements listed above.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) 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(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), 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(s) should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application(s) 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(s), accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Marianne Jenkins at (571) 272-3223.

This application is being forwarded to Technology Center Art Unit 2675 for appropriate action on the amendment filed June 30, 2004, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application(s).

Karen O. Creasy

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

Attachment: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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JUL 03 2006

OFFICE OF PETITIONS

In re Application of	:	
Disalvo et al.	:	
Application No. 09/991,407	:	DECISION ON PETITION
Filed: November 16, 2001	:	
Attorney Docket No. PPC-812	:	
Title of Invention: Catemenial Device	:	
Change Indicator	:	

This is a decision on the petition under 37 CFR §1.137(b), filed May 31, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office Action of March 24, 2005. The final Office Action set a three (3) month shortened statutory period for reply. . No extensions of time were obtained under the provisions of 37 CFR §1.136(a). This application became abandoned on June 25, 2005. A Notice of Abandonment was mailed on October 4, 2005.

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

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
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 7

BAKER BOTTS L.L.P.
44TH FLOOR
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112-0228

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NOV 2 2 2002

OFFICE OF PETITIONS

In re Application of	:	
Paul Fisher	:	
Application No. 09/991,452	:	NOTICE
Filed: November 21, 2001	:	
Attorney Docket No. 34535-A-PCT-USA-A	:	

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

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ALEXANDRIA, VA 22313-1450
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Paper No. 18

Park, Vaughn & Fleming, LLP
508 Second Street
Suite 201
Davis, CA 95616

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OCT 14 2004

OFFICE OF PETITIONS

ON PETITION

In re Application of
G. William Walster, et al.
Application No. 09/991,476
Filed: November 16, 2001
Attorney Docket No. SUN-P7076-SPL

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

The petition is **GRANTED**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being forwarded to Technology Center 2100.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

COHEN SAKAGUCHI & ENGLISH, LLP
2040 MAIN STREET, 9TH FLOOR
IRVINE, CA 92614

In re Application of	:	
Iain C. Cooke, et. al.	:	
Application No. 09/991,485	:	ON PETITION
Filed: November 13, 2001	:	
Attorney Docket No. CAR-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed by facsimile transmission on October 5, 2006, to revive the above-identified application.

The application became abandoned for failure to timely respond to the Notice of Allowance and Fee(s) Due mailed October 7, 2005. A Notice of Abandonment was mailed on September 28, 2006.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of $700 for payment of the issue fee and $300 for payment of the publication fee; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Therefore, the petition is **GRANTED**.

This application file is being referred to the Office of Publications to be processed into a patent.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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United States Patent and Trademark Office
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PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN, VA 22102

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NOV 13 2006

OFFICE OF PETITIONS

In re Application of :
Dennis L. Montgomery :
Application No. 09/991,490 :
Filed: November 21, 2001 :
Attorney Docket No. 042503/0269273 ETV-018(U) :

ON PETITION

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

The application became abandoned for failure to respond to the non-final Office action mailed October 19, 2005. A Notice of Abandonment was mailed on May 31, 2006.

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 $750; and (3) an adequate 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 Technology Center Art Unit 2624, 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

cc: David J. Jakopin
Pillsbury Winthrop Shaw Pittman, LLP
2475 Hanover Street
Palo Alto, CA 94304-1114 US

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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PILLSBURY WINTHROP SHAW PITTMAN LLP
P.O. BOX 10500
MCLEAN VA 22102

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OFFICE OF PETITIONS

In re Application of

MONTGOMERY, Dennis L.
Application No. 09/991,490
Filed: November 21, 2001
Attorney Docket No. **042503/0269273 ETV-018(U)**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 23, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. The Office requires the practitioner(s) requesting withdrawal to certify that he, she, or they have: (1) given reasonable notice to the client, prior to the expiration of the response period, that the practitioner(s) intends to withdraw from employment; (2) delivered to the client or a duly authorized representative of the client all papers and property (including funds) to which the client is entitled; and (3) notified the client of any responses that may be due and the time frame within which the client must respond, pursuant 37 CFR 10.40(c).

The request was signed by David Jakopin on behalf of all attorneys of record who are associated with customer No. 27498. All attorneys/agents associated with the Customer Number 27498 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

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

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

Tredelle D. Jackson
Paralegal Specialist
Office of Petitions

cc: **DENNIS L. MONTGOMERY**
12720 BUCKTHORN LANE
RENO NV 89511

cc: **ETREPPID TECHNOLOGIES, LLC**
755 TRADEMARK DRIVE
RENO NV 89521

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

David L. Feigenbaum
Fish & Richardson
225 Franklin Street
Boston, MA 02110-2804

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AUG 1 6 2002

OFFICE OF PETITIONS

In re Application of
Arkady Pittel
Application No. 09/991,539
Filed: November 21, 2001
Attorney Docket No. 11627-007001

ON PETITION

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 Notice mailed December 7, 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 March 8, 2002.

The application is being forwarded to the Office of Initial Patent Examination.

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

Latrice Bond

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Arkady Pittel :
Application No. 09/991,539 :
Filed: November 21, 2001 :
Attorney Docket No. 19965-007001 :

This is a decision on the petition, filed May 3, 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 April 6, 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) 272-3208.

The examiner of Technology Center AU 2624 will consider the request for continued examination under 37 CFR 1.114.

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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P.O. Box 1450
Alexandria, VA 22313-1450
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OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8403

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SEP 2 0 2007

OFFICE OF PETITIONS

In re Application of :
Stephen R. Basco et al :
Application No. 09/991,563 : DECISION ON PETITION
Filed: November 20, 2001 :
Attorney Docket No. :
1028-009US01

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 9, 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 reply in a timely manner to the non-final Office action mailed May 6, 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 application became abandoned on August 7, 2005. A Notice of Abandonment was mailed on April 18, 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 (3). In this regard, where an application has been abandoned for more than one year, the Office

requires that the statement of unintentional delay track the language in 37 CFR 1.137(b)(3), which states: "The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The petition presently does not have the statement required by the rule and is required to revive this application.

Further, it appears that petitioner does not wish to pursue prosecution in this application, but to rather revive this application for continuity purposes only with Application No. 11/261,285, filed October 28, 2005. Accordingly, any renewed petition should clearly indicate this intent.

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 $510 extension of time fee submitted with the petition on January 9, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card in due course.

Any renewed petition may be addressed as follows:

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

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

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

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

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

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
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MANDEL & ADRIANO
SUITE 710
55 SOUTH LAKE AVENUE
PASADENA CA 91101

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OFFICE OF PETITIONS

In re Application of	:	
Syed Z. Salhuddin	:	DECISION ON PETITION TO
Application No. 09/991,583	:	WITHDRAW HOLDING OF
Filed: 16 November, 2001	:	ABANDONMENT
Atty Docket No. 30418.2US01	:	

This is a decision on the petition filed on 14 August, 2006, to withdraw the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely respond to the Office action requiring restriction or election mailed on 1 July, 2003, which set a one (1) month shortened statutory period for reply. Notice of Abandonment was mailed on 5 March, 2004.

Petitioner, *pro se*, asserts that the Office communication mailed on 1 July, 2003, was never received.

In the absence of any irregularity in the mailing of the final Office action, there is a strong presumption that the final Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the final Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's

statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the final Office action may have been lost after receipt rather than a conclusion that the final Office action was lost in the mail.

A review of the record indicates that the Office action was properly mailed to the petitioner at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the United States Patent and Trademark Office.

In support of the petition, the petitioner has submitted a statement by inventor Syed Z. Salhuddin, stating that he reviewed file for the above-identified application and has no record of ever having received the Office action mailed on 1 July, 2003. Petitioner further sets forth the procedure by which mail would be opened by an assistant, brought to petitioner, noted for action, and placed into a file for the patent application.[1]

The petitioner has made a sufficient showing of nonreceipt of the Office action. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED.**

The application file is being referred to Technology Center 1600 technical support staff for remailing of the Office action mailed on 1 July, 2003. The period for reply will be reset from the mailing date thereof.

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

DIWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

[1] It is also noted that petitioner filed letters on 19 April and 17 November, 2004, stating that the Office communication had not been received.

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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Colin P. Abrahams
5850 Canoga Avenue
Suite 400
Woodland Hills, CA 91367

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JUN 13 2005

OFFICE OF PETITIONS

In re Application of	:	
John Arnold Budny	:	
Application No. 09/991,588	:	ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No. 1008-120.US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed March 4, 2005, to revive the above-identified application.

In response to the non-final Office action mailed June 30, 2004, petitioner hereby submits $750 for the petition to revive fee, a continuation application, and the statement of unintentional delay as required by 37 CFR 1.137(b).

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/072,665.

This application file is being referred to Files Repository.

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

Andrea Smith
Petitions Examiner
Office of Petitions
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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Christopher L. Holt
WESTMAN CHAMPLIN & KELLY
Suite 1600 - International Centre
900 Sout Second Avenue
Minneapolis MN 55402-3312

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APR 06 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

In re Application of
WENDT, BARRY, et. al.
Serial No.: 09/991,589
Filed: November 16, 2001
For: **IMAGE IDENTIFICATION SYSTEM**

DECISION ON PETITION
ACCEPTANCE OF COLOR DRAWINGS

This is a decision on the petition under 37 C.F.R. § 1.84(a)(2), filed, February 22, 2005, requesting acceptance of color drawings.

The petition requests that the color drawings identified in figures be accepted in lieu of black and white drawings.

A grantable petition under 37 C.F.R. §1.84(a)(2) must be accompanied by a fee set forth under 37 C.F.R. § 1.17(h), 3 (three) set of the color drawings in question, and the specification must contain, or be amended to contain, the following language as the first paragraph in that portion of the specification relating to the brief description of the drawings:

"The file of this patent contains at least one drawing executed in color. Copies of this patent with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee."

The petition is **GRANTED**.

Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FEB 19 2008

Dr. Mark Friedman Ltd.
c/o Discovery Dispatch
9003 Florin Way
Upper Marlboro MD 20772

In re Application of	:	
Michael Kagan et al.	:	
Application No. 09/991,692	:	ON PETITION
Filed: November 26, 2001	:	
Attorney Docket No. 233-102	:	

This is a decision on the petition under 37 CFR 1.137(b), filed May 3, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed September 5, 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) was obtained. Accordingly, the application became abandoned on December 6, 2006. The Notice of Abandonment was mailed March 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 an amendment; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Terri Williams at (571) 272-2991.

The application file is being referred to Technology Center AU 2195 for appropriate action on the concurrently filed amendment.

Liana Walsh
Petitions Examiner
Office of Petitions

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MAY 0 9 2007
PATENT & TRADEMARK OFFICE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
	§	
MICHAEL KAGAN ET AL.	§	
	§	
Serial No.: 09/991,692	§	
	§	
Filed: November 26, 2001	§	Group Art Unit: 2195
	§	
For: MULTIPLE QUEUE PAIR ACCESS WITH A SINGLE DOORBELL	§	Attorney Docket: 3091/22
	§	
Examiner: Kenneth Tang	§	

Commissioner of Patents and Trademarks
Alexandria, Virginia 22313-1450

PETITION TO REVIVE UNINTENTIONALLY ABANDONED
APPLICATION UNDER 37 CFR 1.137(b)

Sir:

Applicants petition the U.S. Patent and Trademark Office under 37 CFR 1.137(b) to revive the present application.

An office action was mailed September 5, 2007 in the current case. The Applicant was interested in responding to the office action. A response was prepared but inadvertently was not filed.

Only recently, when reviewing their patent cases, did the Applicants realize that he failed to respond to the official action. As a result, they do not have an application for the material filed. They confirmed that they had intended to respond to the office action and immediately instructed the undersigned to determine whether anything could be done to revive the US patent application. The undersigned informed the Applicant that the instant Petition to Revive was applicable to the fact situation of the instant application. The Response and this Petition were immediately prepared, and are filed herewith.

We hereby state 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.

02/20/2008 CKHLOK 00000005 062140 09991692
Sale Ref: 00000005-DA#: 062140 09991692
01 FC:2453 750.00 DA

It is apparent that the failure to file a response to the USPTO official action was clearly inadvertent, and that the entire delay in filing from abandonment to the instant filing attached herewith was unintentional. The grant of this petition is respectfully requested.

Authorization to charge my Deposit Account $750 for this petition and any other charges is hereby granted. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

Mark M. Friedman
Attorney for Applicant
Registration No. 33,883

Date: April 29, 2007

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PATENT & TRADEMARK OFFICE

IFW
2195
$

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant:	§	
	§	
Michael Kagan	§	
	§	
Serial No.: 09/991,692	§	
	§	
Filed: 26 November, 2001	§	Group Art Unit: 2195
	§	
For: Multiple Queue Pair Access With A Single Doorbell	§	Attorney Docket: 3091/22
	§	
Examiner: Tang, Kenneth	§	

Commissioner of Patents and Trademarks
Alexandria, VA 22313

PETITION AND FEE FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)

Sir:

(1) This is a petition for an extension of time to respond to the official action, for a period of one month.

(2) Applicant is a:
_X_ small entity

(3)	Extension	Fee for small entity small entity	Fee for other than small entity
	_X_ one month	$ 60	$ 120

(4) A Response _X_ is filed herewith
___ has been filed

(5) Please charge the extension fee and any other amount required to Deposit Account No. 06-2140. A duplicate copy of this form in enclosed.

11/02/2005 MDAHTE1 00000170 062140 09991692
01 FC:2251 60.00 DA

Respectfully submitted,

Mark M. Friedman
Attorney for Applicant
Registration No. 33,883

Date: October 27, 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 8

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620 NEWPORT CENTER DRIVE
SIXTEENTH FLOOR
NEWPORT BEACH, CA 92660

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JUL 09 2002

OFFICE OF PETITIONS

In re Application of	:	
J. Andrea McCart et al	:	
Application No. 09/991,721	:	NOTICE
Filed: November 13, 2001	:	
Attorney Docket No. NIH174.001C1	:	

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 Office of Initial Patent Examination for further processing.

Wan Laymon

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

US 0999172109P1

Creation date: 09-30-2003
Indexing Officer: HNGUYEN28 - HAO NGUYEN
Team: OIPEBackFileIndexing
Dossier: 09991721

Legal Date: 07-16-2002

No.	Doccode	Number of pages
1	IDS	2
2	NPL	11
3	NPL	3
4	NPL	5
5	NPL	7
6	NPL	9
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8	NPL	10
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10	NPL	6
11	NPL	6
12	NPL	9
13	NPL	6
14	NPL	8
15	NPL	2
16	NPL	8
17	NPL	7
18	NPL	9
19	NPL	10
20	NPL	8
21	NPL	2

Total number of pages: 155

Remarks:

Order of re-scan issued on .....

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MAR 16 2010

OFFICE OF PETITIONS

FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS MN 55440-1022

In re Application of	:	
Kuwamoto et al.	:	DECISION ON
Patent Number: 7,526,720	:	APPLICATION FOR
Issue Date: 04/28/2009	:	PATENT TERM ADJUSTMENT
Application No. 09/991766	:	and
Filing or 371(c) Date: 11/23/2001	:	NOTICE OF INTENT TO ISSUE
Attorney Docket Number:	:	CERTIFICATE OF CORRECTION
07844-729001	:	

This is a decision on the petition filed on June 29, 2009, which is being treated as a petition under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand four (1004) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on November 24, 2004 and ends on May 1, 2006, the day before the RCE was filed, and is 524 (not 525) days. See, 35 U.S.C. 154(b)(1)(B)(i).

As such, the patent term adjustment is 1003 days, not 1004 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given one (1) month or thirty (30) days, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Corrections Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand three (1003) days**.

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

Telephone inquiries specific to this matter should be directed to Attorney Derek Woods, at (571) 272-3232.

/ALESIA M. BROWN/

Alesia Brown
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,526,720 B1

DATED : **April 28, 2009**

INVENTOR(S) : Kuwamoto 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 479 days.

Delete the phrase "by 479 days" and insert – by 1003 days--

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COMMISSIONER FOR PATENTS
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Paper No. 7

International Business Machines Corporation
Intellectual Property Law - Mail 972E
1000 River Road
Essex Junction, VT 05452

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FEB 13 2004

OFFICE OF PETITIONS

In re Application of
Steven H. Voldman, et. al.
Application No. 09/991,771
Filed: November 16, 2001
Attorney Docket No: BUR920000193US1

ON PETITION

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

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed January 18, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight March 18, 2002.

In response to the Notice to File Corrected Application Papers, petitioner submitted with the instant petition $1,330 for the petition to revive fee, and seven (7) sheets of substitute drawings containing Figures 1-10.

Since the requirements for a grantable petition have been met, the petition is **GRANTED**.

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

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

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

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AUG 29 2005

OFFICE OF PETITIONS

MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

In re Application of :
George Jackowski, et al. :
Application No. 09/991,795 :
Filed: November 23, 2001 :
Attorney Docket No. 2132.105 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 19, 2005, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed October 21, 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 on January 22, 2004.

Receipt is acknowledged of the Declaration filed July 19, 2005, with the instant petition.

The petition satisfies the requirement of 37 CFR 1.137 (b) in that petitioner has supplied (1) the reply in the form of an Amendment; (2) the petition fee of $750; and (3) the required statement of unintentional delay have been received. Accordingly, the petition filed July 19, 2005 is accepted as having been unintentionally delayed.

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

The application file is being forwarded to Technology Center 1600, Art Unit 1641 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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2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
George Jackowski, et al. :
Application No. 09/991,796 :
Filed: November 23, 2001 :
Attorney Docket No. 2132.109 :

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed March 9, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on June 10, 2004.

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 of $750; and (3) an adequate statement of unintentional delay.

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

The application matter is being forwarded to Technology Center 1600, Art Unit 1646 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

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Paper No. 19

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In re Application of
George JACKOWSKI, *et al.*
Application No. 09/991,799
Filed: November 23, 2001
Attorney Docket No. 2132.086

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on June 27, 2005 to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed on November 25, 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, by operation of law, on February 26, 2004. A Notice of Abandonment was mailed on June 16, 2004.

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, a Request for Continued Examination (RCE) under 37 CFR 1.114, and the $395 filing fee; (2) the petition fee of $750; and (3) an adequate statement of unintentional delay. Accordingly, the reply to the final Office action of November 25, 2003 is accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to Anatoly Vortman at (571) 272-6051, or in his absence to the undersigned at (571) 272-7099.

The application file is being referred to Technology Center AU 1646 for appropriate action on the RCE and concurrently filed amendment.

David Bucci
Petitions Examiner
Office of Petitions

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Paper No. 18

MCHALE & SLAVIN, P.A.
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OFFICE OF PETITIONS

In re Application of

Jackowski and Marshall

Application No. 09/991,809

Filed: November 23, 2001

Attorney Docket No. 2132.111

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 19,2 005, 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 October 6, 2003, which set a shortened statutory period for reply of three (3) months. Extensions of time were available pursuant to 37 CFR 1.136(a). No response was received within the allowed period and the application became abandoned on January 7, 2004. A Notice of Abandonment was mailed on June 1, 2005.

The amendment filed July 19, 2005, is noted and made of record.

The application is being directed to Technology Center 1600, GAU 1641 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

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AUG 2 5 2005

OFFICE OF PETITIONS

In re Application of
Robert R. MOORE et al
Application No. 09/991,822
Filed: November 6, 2001
Attorney Docket No. 9964/417/CIP/DIV

DECISION ON PETITION
UNDER 37 CFR 1.137(b)

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 15, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 16, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137 (b) in that (1) the reply in the form of an amendment; (2) the petition fee of $1,500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the non-final Office action of December 15, 2004 is accepted as having been unintentionally delayed.

This application is hereby accorded rule 1.47(b) status.
37 CFR 1.63(d)(3) states:

> Where the executed oath or declaration of which a copy is submitted for a continuation or divisional application was originally filed in a prior application accorded status under § 1.47, the copy of the executed oath or declaration for such prior application must be accompanied by:
>
> > (i) A copy of the decision granting a petition to accord §1.47 status to the prior application, unless all inventors or legal representatives have filed an oath or declaration to join in an application accorded status under §1.47 of which the continuation or divisional application claims a benefit under 35 U.S.C. 120, 121, or 365 (c)

The copy of the decision granting the petition under 37 CFR 1.47(b) in the prior application serial number 09/228,706 has been received on August 11, 2005 and has been made of record in the above-identified application. The application papers are now in compliance with 37 CFR 1.47(b).

As provided in 37 CFR 1.47(c), no notice of this application's filing will be forwarded to the non-signing inventor nor will such notice be published in the Official Gazette since notice regarding the filing of the prior application was given to the non-signing inventor(s).

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 documentation 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 Amelia Au at (571) 272-7414. All other inquiries concerning either the examination or status of the application should be directed to the Technology Center.

The application file is being referred to Technology Center Art Unit 1754 for appropriate action.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions

cc: DUGAN & DUGAN, P.C.
55 SOUTH BROADWAY
TARRYTOWN NY 10591

VALERIE G. DUGAN
BRIAN M. DUGAN, PH.D.

DUGAN & DUGAN, PC
PATENTS, TRADEMARKS & COPYRIGHTS
55 SOUTH BROADWAY
TARRYTOWN, NY 10591

(914)332-9081 TELEPHONE
(914)332-9082 FACSIMILE
DUGANEMAIL@DUGANPATENT.COM

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August 11, 2005

PLEASE DELIVER THE ATTACHED MESSAGE TO:

Examiner: Frances Hicks
Phone No.: (571) 272-3218
Fax No.: (571) 273-0025

From: Brian M. Dugan

Our File No.: Docket No. 9964/ATMI 471

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Moore et al.
Serial No.	:	~~09/228,706~~ 09/991,822
Filed	:	January 12, 1999
For	:	APPARATUS AND METHOD FOR CONTROLLED DECOMPOSITION OXIDATION OF GASEOUS POLLUTANTS
Examiner	:	Frances Hicks
Group Art Unit	:	1764

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE: 6

* * *

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Paper No. 21

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Steven J. Hultquist
Intellectual Property Tech. Law
PO Box 14329
Research Triangle Park, NC 27709

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

In re Application of
Moore et al.
Application No. 09/228,706
Filed: January 12, 1999
For: Apparatus and Method for Controlled Decomposition Oxidation of Gaseous Pollutants

FAX RECEIVED
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This is in response to the "Petition Under 37 CFR 1.47(b)," filed February 12, 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(b), this Office will forward notice of this application's filing to the non-signing inventors at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

After the mailing of this decision, the file will be forwarded to the Office of Patent Publication.

Application No. 09/228,706

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

Latrice Bond

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
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Ravil Safiullin
3691 Bassett Court
South San Francisco, CA 94080

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AUG 1 1 2005
OFFICE OF PETITIONS

In re Application of
Robert R. Moore, James D. Getty and Ravil Safiullin
Aplication No. 09/228,706
Filed: January 12, 1999
For: Apparatus and Method for Controlled Decomposition Oxidation of Gaseous Pollutants

Dear Mr. Safiullin:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will 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 patent 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 Latrice Bond at (703) 308-6911. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-6911. 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).

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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James D. Getty
107 Amberwood Court
Vacaville, CA 95688

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AUG 1 1 2005
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In re Application of
Robert R. Moore, James D. Getty and Ravil Safiullin
Aplication No. 09/228,706
Filed: January 12, 1999
For: Apparatus and Method for Controlled Decomposition Oxidation of Gaseous Pollutants

Dear Mr. Getty:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will 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 patent 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 Latrice Bond at (703) 308-6911. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-6911. 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).

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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Robert R. Moore
1032 Shetler Avenue
Napa, CA 94559

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In re Application of
Robert R. Moore, James D. Getty and Ravil Safiullin
Aplication No. 09/228,706
Filed: January 12, 1999
For: Apparatus and Method for Controlled Decomposition Oxidation of Gaseous Pollutants

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Dear Mr. Moore:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(b), Rules of Practice in Patent Cases. Should a patent be granted on the application you will 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 patent 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 Latrice Bond at (703) 308-6911. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-6911. 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).

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

Frances Hicks
Frances Hicks
Lead Petitions Examiner
Office of Petitions
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for Patent Examination Policy

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JJGJR.: 06-04

Paper No: 11

BLAKELY SOKOLOFF
TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD/
SEVENTH FLOOR
LOS ANGELES CA 90025

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OFFICE OF PETITIONS

In re Application of
England :
Application No. 09/991,828 :
Filing Date: 21 November, 2001
Attorney Docket No. 42390P6233C :

This is a decision on the petition filed on 22 March, 2004, and in light of the allegations 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 as considered under 37 C.F.R.§1.181 is **GRANTED**.

BACKGROUND

The record reflects that:

- it appeared that Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 24 November, 2003, with reply due absent extension of time on 24 December, 2003;
- a result, the application was deemed abandoned after midnight 24 December, 2003;
- Notice of Abandonment was mailed on 3 February, 2004;
- with the instant petition Petitioner included, *inter alia*: documents evidencing the filing of

a reply with a request and fee for a three- (3-) month extension of time via FAX on 22 March, 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).[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]))

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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.

Allegations as to the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner evidences timely reply (with request and fee for extension of time) to the Notice of Non-Compliant Amendment, and so satisfies the showing as required under 37 C.F.R. §1.181.

CONCLUSION

Because Petitioner satisfied the burdens set forth in Delgar v. Schulyer, the petition under 37 C.F.R. §1.181 hereby is **granted**, the 3 February, 2004, Notice of Abandonment is **vacated** and the petition fee is waived.

The file is held in the Office of Petitions to address another matter.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.

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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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Paper No: 12

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TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD/
SEVENTH FLOOR
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OFFICE OF PETITIONS

In re Application of
England :
Application No. 09/991,828 :
Filing Date: 21 November, 2001
Attorney Docket No. 42390P6233C :

This is a decision on the petition filed on 22 March, 2004, to revive the instant application under 37 C.F.R. §1.137(b), as abandoned due to unintentional delay.

For the reasons set forth below, the petition under 37 C.F.R.§1.137(b) is **DISMISSED**.

BACKGROUND

The record reflects that:

- it appeared that Petitioner failed to reply timely and properly to the Notice of Non-Compliant Amendment mailed on 24 November, 2003, with reply due absent extension of time on 24 December, 2003;
- a result, the application was deemed abandoned after midnight 24 December, 2003;
- Notice of Abandonment was mailed on 3 February, 2004;
- the instant matter was considered as a request to withdraw the holding of abandonment

under 37 C.F.R. §1.181 (because Petitioner included with the instant petition, *inter alia*: documents evidencing the filing of a reply with a request and fee for a three- (3-) month extension of time via FAX on 22 March, 2004), and the petition under 37 C.F.R. §1.181 was granted;

- thus, the instant petition is moot.

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

---

[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.

regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]))

CONCLUSION

The holding of abandonment previously was withdrawn, and, therefore, the instant petition under 37 C.F.R. §1.137(b) is **dismissed as moot**, and the petition fee is refunded via Deposit Account 50-0221.

The file is being forwarded to Technology Center 2600 for further processing 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.

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ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS MO 63102

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AUG 3 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Wen-Lung Liu	:	
Application No. 09/991,846	:	ON PETITION
Filed: November 16, 2001	:	
Attorney Docket No. LELI 3448	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 25, 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 final rejection Office action mailed October 31, 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 1, 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 $475 extension of time submitted with the petition on June 25, 2004 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

The application file is being referred to Technology Center AU 2832.

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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Paper No. 14

MORGAN LEWIS & BOCKIUS LLP
1111 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20004

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OCT 2 4 2003

OFFICE OF PETITIONS

In re Application of
Zvi Feldman, et al.
Application No. 09/991,870
Filed: November 26, 2001
Attorney Docket No. 053332-5002

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(2), filed September 3, 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 5, 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.

The application is being forwarded to Technology Center AU 3722 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 F e 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 Fe Transmittal Form must be compl ted and timely submitted to avoid abandonment. Note the languag in bold text on the first page of the Notic of Allowance and Fee(s) Due (PTOL-85).

#11
DW

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MAR 13 2003

Jones, Volentine, Steinberg & Whitt, LLP
12200 Sunrise Valley Drive
Suite 150
Reston, VA 20191

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MAR 13 2003

OFFICE OF THE DIRECTOR
TC 3600

In re application of
Glenn Bingham et al.
Application No. 09/991,883
Filed: January 31, 2001
For: MEETING SITE SELECTION BASED ON ALL-INCLUSIVE MEETING COST

: DECISION ON REQUEST
: FOR WITHDRAWAL OF
: ATTORNEY

This is a decision on the request filed on January 7, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED 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 and the attorneys of Finnegan, Henderson, Farabow, Garrett & Dunner, do not now have, and apparently never have had, power of attorney in this application.

The application transmittal letter of November 26, 2001 indicated that "since power does not appear in the original declaration, power will be supplied following receipt of a Notice to File Missing Parts of Nonprovisional Application." A response to the Notice to File Missing Parts of Application was received February 6, 2002; however, it did not include a power of attorney to Finnegan, Henderson, Farabow, Garrett & Dunner. Furthermore, the correspondence address was improperly changed since the attorney signing the transmittal letter did not have authorization to change the correspondence address per 37 CFR 1.33.

Steven N. Meyers
Special Programs Examiner
Patent Technology Center 3600
(703) 308-3868
(703) 605-0586 (facsimile)

SNM/tpl: 3/12/03

cc: Finnegan, Henderson, Farabow, Garrett & Dunner, LLP
1300 I Street, NW
Washington, DC 20006

#19
DW

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JUL 29 2003

OFFICE OF THE DIRECTOR
TC 3600

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE NC 28280-4000

In re application of:
Bingham et al.
Application No. 09/991883
Filed: November 26,2001
For: Meeting site selection based on all-inclusive meeting cost

: DECISION ON REQUEST
: FOR WITHDRAWAL OF
: ATTORNEY

This is a decision on the request filed on April 1, 2003 by Adam Volentine, 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 power of attorney has already been withdrawn as per the Notice to that effect of April 14, 2003.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(703) 308-0866
(703) 605-0586

KJD/ekn: 07/22/03

cc: Volentine Francos, PLLC
12200 Sunrise Valley Drive, Suite 150
Reston, VA 20191
(703) 715-0870

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John T. Whelan
3375 Bayside Road
Huntingtown MD 20639

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MAY 23 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of :
McGregor, et al. :
Application No. 09/991,899 :
Filed: November 23, 2001 :
Attorney Docket No. AZOTH-1 :
For: METHOD, ARCHITECTURE, AND APPARATUS FOR DYNAMIC CONTENT TRANSLATION AND SWITCHING

This is a decision on the petition under 37 CFR 1.137(b), filed on March 31, 2006 to revive the above-identified application.

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

This application became abandoned for failure to timely respond to the final Office action mailed September 2, 2005, which set an extendable three month period for reply. Applicants submitted a three month extension of time and an amendment after final on March 6, 2006 (certificate of mailing date March 2, 2006). The amendment after final failed to place this application in *prima facie* condition for allowance, as was explained in the March 27, 2006 Advisory action. Accordingly, this application became abandoned on March 3, 2006. No Notice of Abandonment has been mailed.

Applicants have submitted a RCE and required fee and a previously filed amendment as the submission in reply to the September 2, 2005 final Office action, an acceptable statement of the unintentional nature of the delay in responding to the September 2, 2005 final Office action, and the petition fee.

The statement of unintentional delay presented in the petition does not comply with the current rule. 37 CFR 1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional."

If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

The petition is **granted**.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs from the address of record. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

After the mailing of this decision the application will be forwarded to Technology Center AU 2152 for consideration of the RCE March 31, 2006.

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

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

CC: THE LAW OFFICE OF JOHN T. WHELAN, L.L.C.
135 WEST DARES BEACH ROAD
SUITE 204
PRINCE FREDERICK, MD 20678

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Paper No. 8

Toler Larson & Abel, LLP
5000 Plaza On the Lake
Suite 265
Austin, TX 78746

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OFFICE OF PETITIONS

ON PETITION

In re Application of :
Michael D. Dahlin et al. :
Application No. 09/992,035 :
Filed: November 23, 2001 :
Attorney Docket No. 1039-0030 :

This is a decision on the petition under 37 CFR 1.137(b), filed November 13, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed May 24, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on July 25, 2002.

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 $1005 extension of time submitted with the petition on November 13, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

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

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

Latrice Bond

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

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TOLER SCHAFFER, LLP
5000 PLAZA ON THE LAKES, SUITE 265
AUSTIN, TX 78746

In re Application of

DAHLIN, et al.
Application No. 09/992,035
Filed: November 23, 2001
Attorney Docket No. 1039-0030

DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 19, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

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

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

Denise Pothier
Petitions Examiner
Office of Petitions

cc: **LARSON NEWMAN ABEL POLANSKY & WHITE, LLP**
5914 West Courtyard Drive, Suite 200
Austin, TX 78730

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Paper No. 9

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P.O. BOX 29567
AUSTIN, TX 78755-9567

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OFFICE OF PETITIONS

In re Application of
Dahlin et al.
Application No. 09/992,036
Filed: November 23, 2001
Attorney Docket No. 1039-0040

ON PETITION

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 13, 2003, to revive the above-identified application.

The petition is **granted.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 7, 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 timely obtained. Accordingly, the above-identified application became abandoned on February 8, 2002. A Notice of Abandonment was mailed on October 20, 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 $1005.00 extension of time fee submitted with the petition on November 13, 2003 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account as authorized.

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

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

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

Karen Creasy

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

cc: John R. Schell
TOLER, LARSON & ABEL, LLP
5000 Plaza On The Lake
Suite 265
Austin, TX 78746

UNITED STATES PATENT & TRADEMARK OFFICE
Washington, D.C. 20231

REQUEST FOR PATENT FEE REFUND

1 Date of Request: 11-20-03

2 Serial/Patent # D9992036

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
✓	Extension of Time	#5	11-13-03	$ 1005.00
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
	Other			$

7 TOTAL AMOUNT OF REFUND: $ 1005.00

8 TO BE REFUNDED BY:

	Treasury Check
✓	Credit Deposit A/C #:

9 50--2469

10 REASON:

	Overpayment
	Duplicate Payment
✓	No Fee Due (Explanation):

EOT filed outside of maximum extendable timeframe - unnecessary

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Diana Chase TITLE: Paralegal

SIGNATURE: Diana Chase PHONE: 306-0482

OFFICE: Ofc. of Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [illegible] DATE: 11/26/03

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 f Finance
Refund Branch
Crystal Park One, Room 802B

FORM PTO 1577
(01/90)

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TOLER SCHAFFER, LLP
5000 PLAZA ON THE LAKES
SUITE 265
AUSTIN, TX 78746

In re Application of DAHLIN, et al. Application No. 09/992,036 Filed: November 23, 2001 Attorney Docket No. 1039-0040	DECISION ON PETITION TO WITHDRAW FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 19, 2006.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

A review of the file record indicates that Customer no. 60533 (Toler Schaffer, LLP): (1) does **not** have power of attorney in this patent application; and (2) has been employed or otherwise engaged in the proceedings in this patent application.

The request cannot be approved because no reasons for withdrawal have been provided. The Office cannot, at this time, determine whether practitioner's request is one of the mandatory or permissive reasons enumerated in 37 CFR 10.40. Any subsequent requests must include reasons for withdrawal. Please note that there is a space provided for on PTO/SB/83 (Request to Withdraw as Attorney or Agent) to supply practitioner's reasons.

Furthermore, Customer no. 60533 cannot be withdrawn from record because the power of attorney in this application was never appointed by customer number. The individuals given power of attorney on the OATH filed November 13, 2003 remain of record.

All future communications from the Office will continue to be directed to the below-listed address from the Correspondence Address change dated June 13, 2006 until otherwise notified by applicant.

Applicant should check the current status of this application for any office actions from the Office that requires a reply from the applicant.

Telephone inquiries concerning this decision should be directed to Amelia Au at 571-272- 7414.

Amella Au
Petitions Examiner
Office of Petitions

cc:

LARSON NEWMAN ABEL POLANSKY & WHITE, LLP
5914 WEST COURTYARD DRIVE
SUITE 200
AUSTIN, TX 78730

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Paper No. 7

Robert E. Krebs
Thelen Reid & Priest LLP
P.O. Box 640640
San Jose, CA 95164-0640

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OFFICE OF PETITIONS

In re Application of
Bojan Silic
Application No. 09/992,049
Filed: November 21, 2001
Attorney Docket No. 034942-261

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 27, 2003, to revive the above-identified application.

The petition is GRANTED.

The above-identified application became abandoned for failure to submit substitute drawings in a timely manner in reply to the Notice To File Corrected Application Papers mailed December 7, 2001, which set a shortened statutory period for reply of two(2) months. Accordingly, the application became abandoned on February 8, 2002.

Telephone inquiries concerning this decision should be directed to Cheryl Gibson-Baylor at (703)308-5111, or in her absence, Sherry D. Brinkley at (703)305-9220.

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

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

Sherry D. Brinkley
Petitions Examiner

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Paper No. 082404

LUMEN INTELLECTUAL PRPOERTY SERVICES
45 CABOT AVENUE, SUITE 110
SANTA CLARA, CA 95051

OCT 26 2004

In re Application of:	:	
DONG LIN	:	
Serial No.: 09/992,050	:	DECISION ON REQUEST TO WITHDRAW
Filed: November 21, 2001	:	FROM RECORD
Attorney Docket No.: **PHA-101/US**	:	

This is a decision on the request to withdraw as attorney/agent of record under 37 C.F.R. § 1.36, filed April 05, 2004.

A grantable request to withdraw as attorney of record must be signed by every attorney seeking to withdraw or contain a clear indication that one attorney is signing on behalf of others. A request to withdraw will not be approved unless at least thirty (30) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period, which can be extended under 37 C.F.R. § 1.136(a).

The request meets all the above stated requirements. The request was signed by Ron Jacobs, on behalf of himself and all the attorneys/agents of record. There is no outstanding Office action at this time.

The request is **APPROVED**.

There are no attorneys/agents of record at this time.

All future communications from the Office will be directed to the inventor, Dong Lin, at the below address, until otherwise notified by applicant.

Inquiries related to this decision should be directed to Clayton E. Laballe at (571) 272-15946.

Clayton E. Laballe, Special Programs Examiner
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

cc: DON LIN
518 VISTA SPRING COURT
MILPITAS, CA 95035

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SUITE 1100
WASHINGTON DC 20005-1209

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In re Application of	:	
Hajime Homma	:	DECISION ON PETITION
Application No. 09/992,052	:	
Filed: November 23, 2001	:	
Atty Docket No. 041514-5368	:	

This is a decision on the "REQUEST TO RESCIND HOLDING OF ABANDONMENT" filed February 28, 2006.

The above-identified application became abandoned for failure to file a timely and proper reply to the final Office action mailed June 7, 2005. This Office action set a three-month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a). An amendment was received on September 7, 2005, but was not considered by the examiner to place the application in condition for allowance (Advisory Action mailed September 26, 2005). No further reply received and no extension of time obtained, the above-identified application became abandoned on September 8, 2005. A Notice of Abandonment was mailed on February 22, 2006.

In response, applicant timely filed the instant petition. Petitioner states that a response to the final Office action (including a Request for Continued Examination (RCE), and petition for extension of time) was received in the Office on November 7, 2005. In support thereof, petitioner submitted a copy of their response and a date-stamped acknowledgment receipt.

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

receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

Petitioner's evidence is persuasive that the response including an RCE[1] was filed on November 7, 2005. Petitioner is advised that the instance evidence is not as persuasive as a postcard, which solely lists the items being filed. In deciding this petition, reliance is had on petitioner's duty of candor and good faith to the Office that the receipt is a true copy of the acknowledgment receipt as presented to the Office.

Accordingly, the Notice of Abandonment mailed February 22, 2006 is hereby **VACATED**, and the holding of abandonment is hereby **WITHDRAWN**.

The petition under § 1.181 is **GRANTED**.

No fee is required on petition under § 1.181.

Technology Center AU 2674 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical staff to withdraw the holding of abandonment and to process the RCE and preliminary amendment filed November 7, 2005 (and resubmitted on petition filed February 28, 2006).

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

[1] The fee for extension of time for response within the second month was timely processed.

UNITED STATES 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 LLP
30 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

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OCT 21 2005

OFFICE OF PETITIONS

In re Patent No. 6,882,387	:
Issue Date: April 19, 2005	:
Application No. 09/992,062	: DECISION ON PETITION
Filed: November 5, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 2122-4066US2	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed September 23, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/421,103, filed October 19, 1999, by way of a certificate of correction filed concurrently herewith.

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.

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

The reference to add the claim for benefit to the above-noted, prior-filed application is unacceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry

> forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Since the incorporation by reference statement was present on filing as to Application No. 09/048,754, it is permissible to include the statement for that application. However, as the incorporation by reference was not present on filing as to the nonprovisional application now sought to be added, it would not be proper to include this statement.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a renewed petition under 37 CFR 1.78(a)(3) and a certificate of correction which deletes the incorporation by reference statement is required.

As authorized, the $1,370 fee required by 37 CFR 1.78(a)(3)(ii) was charged to petitioner's deposit account, along with the $100 fee for the certificate of correction.

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

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

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

By fax: (571-273-8300
ATTN: Office of Petitions

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

Frances Hicks

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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Alexandria, VA 22313-1450
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DEC 28 2005

OFFICE OF PETITIONS

MORGAN & FINNEGAN LLP
30 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

In re Patent No. 6,882,387	:
Issue Date: April 19, 2005	:DECISION GRANTING PETITION
Application No. 09/992,062	:UNDER 37 CFR 1.78(a)(3)
Filed: November 5, 2001	:
Attorney Docket No. 2122-4066US2	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed October 27, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/421,103, filed October 19, 1999, by way of a Certificate of Correction filed concurrently herewith.

The petition is **GRANTED**.

The instant case was filed on November 5, 2001. The claim for priority to the above-noted, prior-filed nonprovisional application was not made within the time period provided by 37 CFR 1.78(a)(2(ii). Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

As the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

It is noted that a Certificate of Correction issued on November 18, 2005, prior to the granting of the petition under 37 CFR 1.78(a)(3). Therefore, no further action is required in this matter.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 23

MCHALE & SLAVIN
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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JUL 29 2005

OFFICE OF PETITIONS

In re Application of :
George Jackowski et al :
Application No. 09/992,067 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. 2132.100 :

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed January 12, 2004, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on April 13, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (RCE); (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of January 12, 2004 is accepted as having been unintentionally delay.

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

The file is being forwarded to Technology Center AU 1641.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

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SEP 27 2005

OFFICE OF PETITIONS

In re Application of	:	
Bejanin, et al.	:	
Application No. 09/992,095	:	PATENT TERM ADJUSTMENT
Filed: November 13, 2001	:	
Dkt. No.: 91.US5.DIV	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)," filed July 12, 2005.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is **GRANTED**.

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 434 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

A review of the application history reveals that an adjustment under 37 CFR 1.702(a)(1) of 519 days can be attributed to the Office for failure to mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed. There were no further delays attributable to the Office at the time of mailing of Notice of Allowance.

The Office errantly entered February 20, 2003 as the date a proper response to the Notice to File Missing Parts was filed rather than May 1, 2002. Thus, the 317 day reduction is in error.

However, the adjustment of 519 is properly reduced 22 days, as indicated by applicants, in accordance with 37 CFR 1.705(b) for applicants failure to engage in reasonable efforts to conclude prosecution (or processing) for the period of time in excess of three months taken to reply to the Notice to File Missing Parts mailed January 9, 2002.

The adjustment of 519 days is further reduced 6 days, as indicated by applicants, in accordance with 37 CFR 1.704(b) for applicants failure to engage in reasonable efforts to conclude prosecution (or processing) for the period of time in excess of three months taken to reply to the Notice to Comply mailed November 14, 2002.

The adjustment of 519 days is further reduced 57 days in accordance with 37 CFR 1.704(b) for applicants failure to engage in reasonable efforts to conclude prosecution (or processing) for the period of time in excess of three months taken to reply to the non-final Office action mailed November 17, 2004.

In view thereof, at the time of Notice of Allowance the application was entitled to a patent term adjustment of 434 days as argued by applicants.

The required fee of $200.00 for an application for patent term adjustment has been charged to Deposit Account No. 06-1205 as authorized in the instant petition.

This application is being forwarded to the Publications Branch for issuance of a patent.

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

Kerry Fine for

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

CC: Copy of Adjustment PAIR Calculation

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : September 7, 2006

TO SPE OF : ART UNIT 1652

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/992095 patent No.: 6,989,262

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: _____

SHERIDAN SWOPE, PH.D.
PRIMARY EXAMINER

SPE
PONNATHAPURA C. RAMIRTHY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

1652
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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)
6,492,873	2002-12-10	09/992,116	2001-11-05	I018-P07090US

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	/John E. Gunther/	Date (YYYY-MM-DD)	2007-04-18
Name	John E. Gunther	Registration Number	43649

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. 6492873
Issue Date: December 10,2002
Application No. 09992116
Filed: November 5,2001
Attorney Docket No. I018-P07090US

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

This is a decision on the electronic petition, filed April 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 April 18,2007 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

DAVID E. LOVEJOY
102 REED RANCH ROAD
TIBURON CA 94920-2025

COPY MAILED
OCT 27 2008

In re Application of	:	
Ronald HILTON	:	
Application No. 09/992,120	:	ON PETITION
Filed: November 14, 2001	:	
Attorney Docket No. AMDH-08157US0 DEL	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 20, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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 December 26, 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 (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted does not *prima facie* place the application in condition for allowance (see attached Advisory Action), the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

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

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

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

By hand: U. S. Patent and Trademark Office

Customer Service Window, Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Telephone inquiries concerning this decision should be directed to Diane Goodwyn at (571) 272-6735.

Thurman Page
Petitions Examiner
Office of Petitions

Attachment: Advisory Action

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/992,120	Applicant(s) HILTON, RONALD	
	Examiner AKASH SAXENA	Art Unit 2128	

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

THE REPLY FILED 20 May 2008 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 3 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: 1-6.
   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: The amendment will not be entered as it presents amended claims as well as new claims that would require further search and consideration.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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AMB 08-02

Paper No. 7

Gerald T. Shekleton, Esq.
Welsh & Katz, Ltd.
120 S. Riverside Plaza
22nd Floor
Chicago, IL 60606

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AUG 2 0 2002

OFFICE OF PETITIONS

In re Application of :
Brown, et al. :
Application No. 09/992,149 :
Filed: November 6, 2001 : ON PETITION
Atty. Dkt No.: 84077 :
For: VACCINES WITH ENHANCED IMMUNE :
RESPONSE AND METHODS FOR THEIR :
PREPARATION :

This is a decision on the petition filed May 10, 2002 to correct the name of an inventor. This petition is being treated under the provisions of 37 CFR 1.182.

The current Office procedure for changing the order of inventors named in an application involves submitting a petition under 37 CFR 1.182 signed by either the attorney or agent of record or all of the applicants designating the desired changed.

The instant petition has met the criteria for changing the order of named inventors. Accordingly, the petition is **GRANTED**.

The name of the inventor has been corrected from WILLIAM POHAJDAK to BILL POHAJDAK as requested in the petition.

Deposit Account No. 19-2550 has been charged the required petition fee of $130.00 as authorized in the instant petition.

This application is being forwarded to the Office of Initial Patent Examination for correction of the file wrapper label and the PALM database regarding the order of inventorship.

Telephone inquiries pertaining to this decision should 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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:05-2005

DATE : May 9, 2005

TO SPE OF : ART UNIT 2621

SUBJECT : Request for Certificate of Correction on Patent No.: 6,859,552

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:

SPE: Bhavesh Mehta **Art Unit** 2621

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 15

MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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JUN 21 2005

OFFICE OF PETITIONS

In re Application of	:	
Mario Anthony Moscarello et al	:	
Application No. 09/992,174	:	ON PETITION
Filed: November 14, 2001	:	
Attorney Docket No. 2132.024	:	

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 28, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 29, 2003.

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

The application file is being forwarded to Technology Center AU 1641.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400

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MAY 24 2006
OFFICE OF PETITIONS

In re Application of:
BUTIKOFER, Chet, et al.
Application No.: 09/992,180
Filing Date: November 14, 2001
Attorney's Docket No.:10013218
For: DEVICE INITIALIZATION IN RESPONSE TO A REMOTE EVENT

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 February 09, 2006.

The petition is **GRANTED**.

This application became abandoned for failure to timely file a proper reply to the final Office action mailed June 15, 2005, which set a shortened statutory period of reply of three (3) months. On August 04, 2005, applicants filed a response to the final Office action; however, as indicated in the Advisory Action mailed January 19, 2006, applicants' August 04, 2005 submission did not place the application in condition for allowance. Applicants did not file a timely Notice of Appeal, and no extensions of time were obtained under 37 CFR 1.136(a). Accordingly, the application became abandoned at midnight on September 15, 2005, three months after the mailing of the final Office action.

On February 09, 2006, applicants filed the petition for revival under 37 CFR 1.137(b) considered herein. The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that it includes: (1) the petition fee; (2) the required statement of unintentional delay; and (3) the required reply in the form of a Notice of Appeal, with fee.[1] Accordingly, the reply to the final Office action mailed June 15, 2005 (in the form of the Notice of Appeal, with fee) is accepted as having been unintentionally delayed.

The application file is being referred to TC 2632.

[1] A timely Appeal Brief and fee were subsequently filed on April 06, 2006.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3296.

Richard M. Ross
Attorney Advisor

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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IPSOLON, LLP
111 SW COLUMBIA
SUITE 710
PORTLAND, OR 97201

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AUG 2 2 2007

OFFICE OF PETITIONS

In re Application of	:	
William Ho Chang et al.	:	
Application No. 09/992,183	:	DECISION ON PETITION
Filed: November 18, 2001	:	
Attorney Docket No. 1282-008/MMM	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 7, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed March 14, 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 application became abandoned on June 15, 2005. A Notice of Abandonment was mailed on May 22, 2006.

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 after non-final, (2) the petition fee of $750.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2155 for appropriate action by the Examiner in the normal course of business on the reply received June 7, 2007.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Rick D. Nydegger
WORKMAN NYDEGGER & SEELEY
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City UT 84111

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SEP 1 0 2004

OFFICE OF PETITIONS

In re Application of	:	
John J. Daniels	:	
Application No. 09/992,190	:	ON PETITION
Filed: November 16, 2001	:	
Attorney Docket No. 14531.71.4.2	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 2, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed July 24, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight October 24, 2003.

In response, petitioner submitted with the instant petition $665 for the petition to revive fee, an amendment, Request for Continued Examination (RCE), $770 for the filing of the RCE, one (1) sheet of Formal Drawing, and a Request for a three (3) months extension of time. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the $950 extension of time submitted with the petition on August 2, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The petition is **GRANTED**.

The application file is being forwarded to Technology Center Art Unit 2613 for processing the Request for Continued Examination under 37 CFR 1.114, and for further review of the amendment filed with the instant petition.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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FOLEY & LARDNER
777 EAST WISCONSIN AVENUE
SUITE 3800
MILWAUKEE WI 53202-5308

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NOV 2 9 2004

OFFICE OF PETITIONS
ON PETITION

In re Application of :
Hubert F. Metzger :
Application No. 09/992,205 :
Filed: November 6, 2001 :
Attorney Docket No. 054726-0115 :

This is a decision on the petition, filed November 17, 2004, under 37 CFR 1.313©)(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©)(2).

Petitioner is advised that the issue fee paid on April 22, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Further, petitioner should be aware that the RCE submitted in conjunction with the instant petition should have been filed on separate paper. See 37 CFR 1.4(c).

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

The examiner of Technology Center AU 1742 will consider the request for continued examination under 37 CFR 1.114.

Karen Creasy

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

---

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

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ALEXANDRIA, VA 22313-1450
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FOLEY & LARDNER LLP
777 EAST WISCONSIN AVENUE
SUITE 3800
MILWAUKEE, WI 53202-5308

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MAY 16 2006

OFFICE OF PETITIONS

In re Patent No. 6,929,723	:
Issued: August 16, 2005	: LETTER REGARDING PTA AND
Application No. 09/992,205	: NOTIFICATION OF INTENT TO ISSUE
Filed: November 6, 2001	: CERTIFICATE OF CORRECTION
Atty. Dkt. No.: 054726-0115	:

This letter is in response to the "COMMUNICATION REGARDING PATENT TERM ADJUSTMENT," filed December 12, 2005. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The above-identified application issued as U.S. Pat. No. 6,929,723 on August 16, 2005. The patent issued with a patent term adjustment (PTA) of 101 days. Patentee, however, indicates that there may be an error in the adjustment.

A review of the application history reveals that at the time of issuance, the patent was entitled to an overall adjustment of 88 days.

An adjustment of 162 days can be attributed to the Office. *See* 37 CFR 1.702(a)(1) and 1.703(a)(1).

The adjustment of 162 is reduced 61 days in accordance with 37 CFR 1.704(b) in connection with the amendment submitted November 17, 2003.

The adjustment of 101 days is further reduced 13 days in accordance with 37 CFR 1.704(c)(10) in connection with the petition and request for continued examination filed November 17, 2004.

In view thereof, the patent is entitled to an adjustment of 88 days.

As this letter was submitted as an advisement to the Office of an error in patentee's favor, no fee is due in connection with this matter. The Office thanks patentee for his good faith and candor in bringing this to the attention of the Office.

This application will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 88 days.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Draft Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT	:	6,929,723 B2
DATED	:	August 16, 2005
INVENTOR(S)	:	Metzger

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 101 days

Delete the phrase "by 101 days" and insert – by 88 days--

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 15

KAREN GUERRERO
VELA PHARMACEUTICALS
3528 OLD BAPTIST ROAD
COLLEGEVILLE, PA 19426

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APR 2 1 2005

OFFICE OF PETITIONS

In re Application of	:	
Lederman et al.	:	
Application No. 09/992,235	:	ON PETITION
Filed: November 6, 2001	:	
Attorney Docket No. 2516-1-002N	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed March 22, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application became abandoned for failure to timely reply to the non-final Office action mailed August 25, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on November 26, 2003. A Notice of Abandonment was mailed April 16, 2004.

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

Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information.[2]

---

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

[2] See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item (1). Petitioner has failed to provide a proper response to the Office action mailed on August 25, 2003. As stated under 37 CFR 1.111(b), in order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to the Office action. The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in the examiner's action and must reply to every ground of objection and rejection in the prior Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. If the reply is with respect to an application, a request may be made that objections or requirements as to form not necessary to further consideration of the claims be held in abeyance until allowable subject matter is indicated. Accordingly, a proper response is required to revive the above-identified application.

Further, petitioner submitted an Issue Fee Transmittal (PTOL-85b) with the instant petition on March 22, 2005, along with the $700.00 issue fee. However, a Notice of Allowance and a Notice of Allowability have yet to be issued by the Examiner of record in the instant application. Accordingly, the $700.00 issue fee will be refunded by treasury check to the petitioner in due course.

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

Any questions concerning this matter may be directed to the undersigned at (571) 272-3206.

Liana Chase

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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KAREN GUERRERO
VELA PHARMACEUTICALS
3528 OLD BAPTIST ROAD
COLLEGEVILLE, PA 19426

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JUN 01 2005

OFFICE OF PETITIONS

In re Application of	:	
Lederman et al.	:	
Application No. 09/992,235	:	ON PETITION
Filed: November 6, 2001	:	
Attorney Docket No. 2516-1-002N	:	

This is a decision on the renewed petition under 37 C.F.R. § 1.137(b), filed May 6, 2005, to revive the above-identified application.

The petition is **GRANTED.**

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

This matter is being referred to Technology Center 1600 for further examination on the merits.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 6

MICHAEL CHAN
NCR CORPORATION
1700 SOUTH PATTERSON BLVD
DAYTON OH 45479-0001

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AUG 0 9 2002

OFFICE OF PETITIONS

In re Application of
Waller, *et al.*
Application No. 09/992,239
Filed: November 6, 2001
For: INFORMATION RETRIEVAL AND DISPLAY

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

This is in response to the April 12, 2002 petition under 37 C.F.R. §1.47(b).

BACKGROUND

This application was filed on November 6, 2001. However, the application lacked a declaration signed by the inventor as required by 35 U.S.C. §25, 35 U.S.C. §115, 37 C.F.R. §1.63, and 37 C.F.R. §1.68. Accordingly, the Office of Initial Patent Examination (hereinafter "OIPE") mailed a notice to file missing parts of nonprovisional application (hereinafter "notice") to the address of record on December 6, 2001. The notice requested a signed declaration and set a two month period for replying.

Applicants responded with this petition, which the office received on April 12, 2002. The petition included a request for a two month extension of time, which with the certificate of mailing dated April 4, 2002, was timely.

THE RULE

37 C.F.R. §1.47

(a) ...

(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.

ANALYSIS

A review of the rule above shows that a grantable petition under 37 C.F.R. §1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor; (5) proof of proprietary interest; and (6) proof of irreparable damage.[1]

With regard to inventor Ward, Petitioner has failed to satisfy requirement one (1) above.

Proof that the non-signing inventors cannot be reached or refuse to sign the oath or declaration.

Before a refusal to sign can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, the address of the nonsigning inventor's attorney.[2] No showing of delivery of the application papers to inventor Ward has been made. Rather, Petitioner specifically states that

> "I did not request a duplicate set of documents...for sending to inventor Ward because inventor Ward had been named as an inventor on two other patent applications in which documents had been sent to him and not returned. I concluded from this that inventor Ward had either moved away without providing a forwarding address or was unwilling to sign."[3]

No indication was made of any attempts to locate co-inventor Ward, not to mention any attempt to deliver the application papers to him.

Before signing a declaration stating that one has read and understood the contents of the application, it is necessary that one be actually presented with a copy of the declaration to review. Accordingly, the inventor Ward has not refused to sign after being given an opportunity to review the application within the meaning of 37 C.F.R. §1.47.

Rule 47 status has, however, been established as to co-inventor Waller.

Therefore, *this petition is* ***dismissed***.

Petitioner is given TWO MONTHS from the mailing date of this decision to respond, correcting the above-noted deficiency. Any response should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(b)" and may include an oath or declaration executed by the inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 C.F.R. §1.136(a).

---

[1] *See* 37 C.F.R. §1.47 "Filing when an inventor refuses to sign or cannot be reached."

[2] M.P.E.P. §409.03(d) "Proof of Unavailablility or Refusal"

[3] *Declaration of Christine Sheppard*

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: Special Program Law Office

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) 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
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Paper No. 8

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OCT 3 1 2002

OFFICE OF PETITIONS

MICHAEL CHAN
NCR CORPORATION
1700 SOUTH PATTERSON BLVD
DAYTON OH 45479-0001

In re Application of
Waller, *et al.*
Application No. 09/992,239
Filed: November 6, 2001
Attorney Docket No. 9488.00

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

This is in response to the October 8, 2002 renewed petition under 37 C.F.R. §1.47(a).

This application was filed on November 6, 2001. However, the application lacked a declaration signed by the inventor as required by 35 U.S.C. §25, 35 U.S.C. §115, 37 C.F.R. §1.63, and 37 C.F.R. §1.68. Accordingly, the Office of Initial Patent Examination (hereinafter "OIPE") mailed a notice to file missing parts of nonprovisional application (hereinafter "notice") to the address of record on December 6, 2001. The notice requested a signed declaration and set a two month period for replying.

Applicants responded with a petition under 37 C.F.R. §1.47(a), which the office received on April 12, 2002. The petition included a request for a two month extension of time, which with the certificate of mailing dated April 4, 2002, was timely.

In a decision dated August 9, 2002, the office dismissed that petition for failure to show that the nonsigning inventor had been given a bona fide opportunity to review the application and sign the required declaration. The decision set a two month deadline for replying.

Petitioner timely replied with the October 8, 2002 filing of this renewed petition.

The above-identified application and papers have been reviewed and found in compliance with 37 C.F.R. §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.

This application will be forwarded to the OIPE for further processing under rule 1.47(a).

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-5593

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
WASHINGTON, D.C. 20231
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Matthew A. Ward
66 Avignon Road, Brockley
London, SE4 2JT

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OCT 3 1 2002

OFFICE OF PETITIONS

In re Application of
Waller, *et al.*
Application No. 09/992,239
Filed: November 6, 2001

Dear Mr. Ward:

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel or record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

Telephone inquiries regarding this communication should be directed to the undersigned at 703-306-5593. 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).

Scott M. Ledford
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: MICHAEL CHAN
NCR CORPORATION
1700 SOUTH PATTERSON BLVD
DAYTON OH 45479-0001

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAY 19 2005

Eddie E. Scott
Assistant Laboratory Counsel
Lawrence Livermore National Laboratory
P.O. Box 808, L-703
Livermore, CA 94551

In re Application of Peter Krulevitch et al Serial No. : 09/992,248 Filed : November 16, 2001 For : Flexible Electrode Array for Artificial Vision	: DECISION ON PETITION : TO WITHDRAW : HOLDING OF : ABANDONMENT

This is a decision on petitioner's request filed October 18, 2004 to review the holding of abandonment mailed October 4, 2004, for failure to respond to the Office action mailed February 23, 2004. The basis for the request is that applicant did not receive the communication mailed February 23, 2004. There is no fee required for this petition.

In order to overcome the presumption of delivery of an Office action, a practitioner must submit the following: (1) a statement from the practitioner stating that the Office action was not received by practitioner; (2) a statement attesting to the fact that a search of the file jacket and docket record indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed. See 1156 OG 53.

The request filed October 18, 2004 includes all the above elements. The request is therefore GRANTED and the holding of abandonment withdrawn. Upon the mailing of this decision, the application will be forwarded to the Legal Instruments Examiner for the re-mailing of the Office action of February 23, 2004.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch, Director
Technology Center 3700
Phone: (571) 272-3750

ak/05/06/05

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

Peter C. Richardson
PFIZER INC
235 East 42nd Street
New York NY 10017-5755

COPY MAILED

AUG 23 2002

OFFICE OF PETITIONS

In re Application of :
Ryan :
Application No. 09/992,301 : ON PETITION
Receipt Date: February 6, 2002 :
Attorney Docket No.: 2089CON2 :
For: APPARATUS AND METHOD FOR :
SEALING AND CUTTING TISSUE :

This is a decision on the petition under 37 CFR 1.182, filed February 15, 2002 (Certificate of Mailing date of February 6, 2002) in response to the Notice of Omitted Item(s) in a Nonprovisional Application ("Notice").

The application was filed November 14, 2001. The Notice, mailed December 6, 2001, indicated that the application had been granted a filing date but that Figure 17 as described in the specification appeared to have been omitted from the application.

The Notice permits applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioner states that the instant application claims the benefit of priority to U.S. Pat. App. No. 09/591,328 which in turn claims the benefit of priority to U.S. Pat. App. No. 08/925,805. Petitioner further states that the instant application was intended to be a complete copy of the original parent application, but that Figure 17 was mistakenly not included with the application as filed November 14, 2001. Petitioner has included with the instant petition a drawing sheet containing Figure 17.

Petitioner argues that while Figure 17 was not included with the application papers filed November 14, 2001, Figure 17 is part of the disclosure of the instant application because Figure 17 was included with the filing of the original parent application, U.S. App. No. 08/925,805, to which the instant application claims priority. Petitioner has included a copy of the parent application in which Figure 17 is present.

Petitioner's arguments have been considered and found unconvincing. The application transmittal letter submitted November 14, 2001 does indicate that the instant application is a continuation of prior application Serial No. 09/591,328 filed June 9, 2000 which is a continuation of prior application Serial No. 08/925,805 filed September 9, 1997. However, there was no incorporation by reference of the disclosure of application No. 08/925,805 into the disclosure of the present application on November 14, 2001.

Petitioner's attention is directed to MPEP 201.06 wherein it states in pertinent part that as a safeguard against inadvertent omissions of prior application papers, an applicant may incorporate by reference the prior application by including, in the continuation or divisional 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 incorporation by reference statement can only be relied upon to permit the entering of a portion of the prior application into the continuation or divisional application when the portion of the prior application has been inadvertently omitted from the submitted application papers in the continuation or divisional application. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuation or divisional application to include any subject matter in such prior application(s), without the need for a petition provided the continuation or divisional application is entitled to a filing date notwithstanding the incorporation by reference. However, a priority claim under 35 U.S.C. 120 in a continuation or divisional application does not amount to an incorporation by reference of the application(s) to which priority is claimed. For the incorporation by reference to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or transmittal letter-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. Mere reference to another application, patent, or publication is not an incorporation of anything therein into the application containing such reference for the purpose of the disclosure required by 35 U.S.C. 112, first paragraph. See, In re de Seversky, 474 F.2d 671, 177 USPQ 144 (CCPA 1973) and Dart Industries, Inc. v. Banner, 207 USPQ 273, 276 (D.C. Cir. 1980).

There is nothing in the language cited in the application transmittal letter as-filed or any of the application papers as filed incorporating the disclosure of either application No. 09/591,328 or application No. 08/925,805 into the instant application. The mere reference to another application is not an incorporation of anything therein into the application containing

the reference.

The petition is accordingly **DISMISSED**.

However, as petitioner seeks to add Figure 17 to the above-identified application on the basis that the drawing does not contain new matter, petitioner should be aware that no petition is necessary in this regard. New drawings may be entered by the primary examiner without a petition so long as the drawings do not contain new matter. *See*, MPEP 608.02(a). Petitioner is advised to file an amendment requesting entry of Figure 17. Any such amendment should be filed prior to the issuance of a first Office action on the merits to avoid further delay in prosecution of the application.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTH** 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 1.182." This is not a final agency decision.

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

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: (703) 308-6916

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

This application is being forwarded to the Office of Initial Patnet Examination with a filing date of November 14, 2001 and without the entry of Figure 17 in the record..

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

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

UNITED STATES 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: 10-03

Paper No: 12

DOUGLAS E. DENNINGER
US SURGICAL DIVISION OF
TYCO HEALTHCARE GROUP, LP
150 GLOVER AVENUE
NORWALK, CT 06856

COPY MAILED
OCT 2 9 2003
OFFICE OF PETITIONS

In re Application of:	:	
Ryan	:	
Filed: 14 November, 2001	:	ON PETITION
Application No. 09/992,301	:	
Docket No.: 2089CON2 (203-2413 CON2)	:	

This is a decision on the renewed petition filed herein on 15 August, 2003, under 37 C.F.R. §1.137(b) to revive the above-identified application as abandoned due to unavoidable delay, and in light of the allegations (non-receipt of Office action) and the supplemental petition filed via FAX on 27 October, 2003, considered as a petition to withdraw the holding of abandonment under 37 C.F.R. §1.181.

For the reasons set forth below, the petition:

- as considered under 37 C.F.R. §1.181 to withdraw the holding of abandonment is **GRANTED**; and
- under 37 C.F.R. §1.137(b) is **DISMISSED as moot** and the fees ($1,300.00) refunded via Treasury check.

BACKGROUND

The record indicates that:

- the instant application was deposited on 14 November, 2001, and a filing date was accorded, however, it appeared that Fig. 17 as referenced in the application was omitted from the materials deposited;
- the Office mailed a Notice of Omitted Items (referencing Fig. 17) on 6 December, 2001,

stating therein that "[t]he failure to file a petition (and petition fee) * * * will be treated as a constructive acceptance by the applicant of the application as deposited in the USPTO";

- on 15 February, 2002, Petitioner timely submitted (over a 6 February, 2002, certificate of mailing) a petition under 37 C.F.R. §1.182 to obtain the 14 November, 2001, filing date for Fig. 17;

- the Office mailed a Notice of Abandonment on 6 May, 2003;

- the petition under 37 C.F.R. §1.182 was dismissed on 23 August, 2002, for failing to satisfy statutory and regulatory requirements;

- Petitioner replied to the Notice of Abandonment on 18 August, 2003, with the petition under 37 C.F.R. §1.137(b), but also submitted therewith copies of the 15 February, 2002, reply timely submitted (over the 6 February, 2002, certificate of mailing) to the Notice of Omitted Items, and so evidenced an argument that the holding of abandonment was improper and should be withdrawn;

- on 27 October, 2003, Petitioner formalized with an express request to withdraw the holding of abandonment the argument that the holding of abandonment was improper.

As noted above, the reply to the Notice of Omitted Items was timely submitted.

Moreover, as discussed below, a reply to a Notice of Omitted Items is not required.

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

---

[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.

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 within the meaning of 35 U.S.C. §41(a)(7) and 37 C.F.R. §1.137(b) are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[6]

Discussion of the proper alternative replies to a Notice of Omitted Items regarding a drawing--including the proper alternative of not replying to said Notice--is set out in the commentaries of the Manual of Patent Examining Procedure (MPEP) at MPEP §601.01(g), which provides in pertinent part:

> An applicant willing to accept the application as deposited in the USPTO need not respond to the "Notice of Omitted Item(s)," and the failure to file a petition under 37 C.F.R. §1.53(e)or 37 C.F.R. §1.182 with the required petition fee as discussed above within 2 months of the date of the "Notice of Omitted Item(s)" (37 C.F.R. §1.181(f)) will be treated as constructive acceptance by applicant of the application as deposited in the USPTO. (Emphasis supplied.)

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

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[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.

of a holding of abandonment.[7]

Petitioner contends and evidences that--although it was not required--he replied timely and properly to the Notice of Omitted Items, and the Office indeed received and acted on that reply, albeit with a dismissal. Therefore, Petitioner satisfies the requirements for having the holding of abandonment withdrawn.

Petitioner's attention is directed to the requirement also discussed at MPEP §601.01(g) for the applicant to file an amendment to cancel all references to the omitted drawing/figure.

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 5 May, 2003, Notice of Abandonment is vacated.

The petition herein under 37 C.F.R. §1.137(b) is **dismissed as moot**.

The instant application is forwarded to OIPE for further processing as necessary before being examined 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

[7] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

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)
6,591,541	2003-07-15	09/992,311	2001-11-19	2578.3009.002

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

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Richard W. Hoffmann, Reg. No. 33,711/	Date (YYYY-MM-DD)	2008-05-06
Name	Richard W. Hoffmann	Registration Number	33711

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
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In re Patent No. 6591541
Issue Date: July 15,2003
Application No. 09992311
Filed: November 19,2001
Attorney Docket No. CUMMINGS P-301

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

This is a decision on the electronic petition, filed May 6,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of May 6,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 7

C. John Brannon
Woodard, Emhardt, Naughton, Moriarty and McNett
Bank One Center/Tower
111 Monument Circle, Suite 3700
Indianapolis IN 46204-5137

COPY MAILED

JUN 25 2003

OFFICE OF PETITIONS

In re Application of
Shute, et al.
Application No. 09/992,320
Filed: November 19, 2001
Attorney Docket No. 12003-218
For: COMBINED OPTICAL LIGHT PIPE AND PROTECTIVE ENCLOSURE

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.182, filed April 21, 2003 (certificate of mailing date April 15, 2003), to change the order of inventorship.

The petition is GRANTED.

The first named inventor is now Eric R. Shute. A replacement filing receipt is enclosed.

The application file does not indicate a change of address has been filed in this case, although the address given on the petition differs slightly from the address of record. The name of the firm is different. A change of address should be filed in this case in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

After the mailing of this decision, the application file will be returned to Technology Center 2800.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

enclosure: replacement filing receipt

cc: QUENTIN G. CANTRELL
WOODARD, EMHARDT, MORIARTY,
McNETT & HENRY, LLP
BANK ONE CENTER/TOWER
111 MONUMENT CIRCLE, SUITE 3700
INDIANAPOLIS, IN 46204-5137

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

NOV 18 2002

Paper No. 12

In re Application of
Bryan Bergeron
Application No. 09/992,328
Filed: November 19, 2001
Attorney Docket No. 7436-1

: DECISION ON PETITION

This is a decision on the petition filed on November 4, 2002 by which petitioner requests supervisory review of the examiner's final restriction requirement, and certain specific relief therefrom. In addition, petitioner requests relief from the examiner's refusal to enter proposed formal drawings as defining new matter. No fee is required for the petition, and a refund of the $130.00 petition fee tendered with the petition will be scheduled.

The petition is granted-in-part.

In paper No. 3, the examiner promulgated a requirement that petitioner elect between claims 1-10, drawn to a drinking container and claims 11-17, drawn to a method of using a drink container. The examiner further required (presumably in the event of an election of the container claims), that petitioner elect between the species of "Group A" which was stated to comply with Figures 2A and 2B, and the species "Group B" of Figures 4A and 4B.

In paper No. 4, petitioner elected the claims drawn to the drinking container, and traversed the requirement to elect between the container claims and the method claims. Petitioner further elected the species of "Group A", noting that the election was "without traverse." Petitioner identified all of the container claims as "reading on" the elected species with the exception of claim 7.

In paper No. 5, the examiner, opined that Figures 2A and 2B "do not show a wedge shaped fluid diverter as claimed in claims 2 and 8-10, do not show a flow channel extending lengthwise along an outer surface of said fluid diverter member as claimed in claims 3 and 8-10 and do not show an extension spout as claimed in claims 6 and 8-10." The examiner according held that claims 2, 3, 6 and 8-10 did not read on the elected species, and that only claims 1, 4 and 5 read on the elected species. The examiner proceeded to act only on claims 1, 4 and 5.

11/20/2002 EBEHOY 00001235 Refund of Pet
CHECK Refund Total: $130.00

Petitioner argues that the requirement to elect between the container claims and the method claims was erroneous because petitioner disagrees with the examiner's holding that the drinking cup can be used as other than a drinking cup, and therefore, in a method other than the recited method of claims 11-17. Petitioner categorizes the examiner's example as removing meaning from the statutory requirements of 35 USC § 121. Petitioner further argues that the examiner has not provided reasons for insisting upon restriction as required by MPEP § 808.02.

A review of the requirements set forth in the relevant portions of Chapter 800 of the Manual of Patent Examining Procedure shows that the examiner's restriction requirement between claims 1-10 as drawn to a drinking container and claims 11-17 as drawn to a method of using that container to drink as performed by a "disabled user" is perfectly proper. It is clear that the drinking container, as claimed, can be used in a literal plethora of methods, some related to utility with fluids, others having nothing to do with fluids. An example of the former would

be one as provided by the examiner. Another example would be to use the container to water one's flower bed. An example of the latter would be to use the container to store items within. Petitioner is neglecting that as a general rule, a statement of intended use "drinking container for assisting a disabled person in drinking a fluid by reducing the degree of tilt necessary to drain the fluid from the container into the person's mouth" would not necessarily distinguish over a reference showing all of the positively recited structure following the word "comprising" in the claim. Such a reference might well render the structural claim unpatentable under 35 USC § 102, while failing to have anything at all to do with the patentability of the method of use claims. Office practice is very specifically discussed in MPEP § 806.05(e) and MPEP § 806.05(h), and whether petitioner chooses to categorize the invention of claims 1-10 as and apparatus for performing the process of claims 11-17, or as a product which performs the method of claims 11-17, it is clear that the examiner has demonstrated that patentability of the process (how the apparatus or product would be used) is a distinct matter from the issue of patentability of the apparatus (or product) *per se* in a manner which satisfies Office practice. Furthermore, petitioner's argument *vis-a-vis* failure to demonstrate a reason for insisting on restriction as required by MPEP § 808.02 is not understood. The examiner has indicated a separate classification for the method and the product (or apparatus); MPEP § 808.02 requires nothing more.

The examiner's holding that claims 2, 3, 6 and 8-10 do not read on Figures 2A and 2B is, however, another matter. The examiner is the one who said that there are two distinctly claimed species, that of Figures 2A and 2B, and that of Figures 4A and 4B. Yet original claims 2, 3, 6 and 8-10 were original claims. Therefore, it would seem that either there is a third species defined by those claims which the examiner neglected to list in the original restriction requirement, or those claims in fact read on Figures 2A and 2B; the only difference between the "species" of Figures 2A and 2B and the "species" of Figure 4 which is set forth in the disclosure and in the claims is the cap in Figure 4.

The conclusion is inescapable that the examiner's holding in which he withdrew claims 2, 3, 6 and 8-10 from consideration was erroneous; either the examiner failed to offer petitioner the opportunity to elect the species defined by those claims, or the examiner erred in holding that they are not part of the disclosure of the species of Figures 2A and 2B. In fact, it is clear that all of the claims in fact read on Figures 4A and 4B, since the container illustrated therein is in fact "the container" described with respect to the various Figure 2 drawings, and would therefore include the features shown therein and described in the written specification. In actuality, it appears to the undersigned that there aren't two species of invention in this application at all, but rather a combination including a drinking vessel and a cap, and a subcombination defined by the drinking vessel *per se*. And therefore, not only is it deemed proper to hold that claims 2, 3, 6 and 8-10 should have been examined in this application, but the claim 7 should likewise have been examined since the examiner has not convincingly established two way distinctness between claim 7 and claims 1-6 and 8-10.

As to the drawings, a review of the original disclosure and of the formal drawings appended to the petition is convincing that the formal drawings do not illustrate subject matter which was reasonably conveyed as having been in the possession of petitioner on the day that this application was filed. Therefore, the examiner's holding to the contrary is deemed to be clearly erroneous, and the formal drawings attached to the petition will be entered, subject to satisfaction of the formal drawing standards of 37 CFR 1.84.

Accordingly, the petition will be granted to the extent that:

a. The election of species requirement will be withdrawn, and all of the pending product (or apparatus) claims will be examined.
b. The formal drawings attached to the petition will be entered.

The petition is denied with respect to the examiner's requirement to restrict between claims 1-10 and claims 11-17, the latter being a method of using the device recited in claims 1-10. However, The application is being forwarded to the Head Supervisory Applications Examiner for:

a. A refund of the $130.00 petition fee.
b. Entry of the Notice of Appeal filed on November 4, 2002 as paper No. 9
c. Entry of the change of correspondence address as paper No. 11 (both the correspondence address and attorney docket number must be changed in the PALM system.)

Thereafter, the application will be forwarded to the Supervisory Patent Examiner of Art Unit 3727 who will insure that the next action in this application is not inconsistent with this decision.

PETITION GRANTED-IN-PART

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

Shawn D. Sentilles
Wyatt, Tarrant & Combs, LLP
1715 Aaron Brenner Drive
Suite 800
Memphis, TN 38120-4367

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ALEXANDRIA, VA 22313-1450
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FEB 24 2004

Paper No. 23

In re Application of
Bryan Bergeron
Application No. 09/992,328
Filed: November 19, 2001
Attorney Docket No. 7436-1

: DECISION ON PETITION

This is a decision on the petition filed on January 16, 2004 by which petitioner requests withdrawal of the examiner's holding dated January 5, 2004 that the appeal brief filed on October 20, 2003 fails to comply with 37 CFR 1.192(c) because it presents issues which, in the examiner's opinion, are petitionable, holds that the statement of claim status does not comply with 37 CFR 1.192(c)(3), and holds that the claim groupings in the appeal brief do not comply with 37 CFR 1.192(c)(7) The petition is considered pursuant to 37 CFR 1.181, and no fee is required. A refund of the $130.00 petition fee will be credited to Deposit Account 50-2346.

The petition is granted-in-part. **However, petitioner is requested to give careful consideration to the basis for granting the requested relief and to the specific statement of exactly what relief is being granted that appears below.**

The Question of Petitionable Matters Appearing in the Appeal Brief

The examiner held that petitioner's appeal contained issues that were proper for decision on petition, (and presumably also contained arguments directed to those issues). 37 CFR 1.192(c) sets forth the requirements pertaining to the items that the appeal brief must include. Nowhere in 37 CFR 1.192(c) is it stated that an appeal brief may not contain specific items, even if such items include issues and arguments that the Board of Patent Appeals and Interferences ("BPAI") will not entertain because they are petitionable pursuant to 37 CFR 1.181, and not appealable pursuant to 37 CFR 1.191. Thus, leaving aside the concept that an Office action may contain both objections that one would ordinarily believe to be petitionable and rejections that are appealable, and that such objections and rejections may sometimes implicate identical issues, thereby necessitating that the resolution of those issues is properly left to the BPAI once an appeal has been filed and perfected (see 37 CFR 1.191 which permits appeal from the final or second or subsequent rejection of claims and compare 37 CFR 1.181 which states that matters that are appealable cannot be petitioned), it is clear that the examiner's holding as embodied item number 9 of the letter dated January 5, 2004 is erroneous.

With respect to the alleged petitionable matters, the record is clarified to specifically indicate that the arguments beginning in the last paragraph of page 2 of the petition, which arguments implicate issues 1, 2 and 3 in petitioner's appeal brief filed on October 20, 2003, were most emphatically not "resolved in applicant's favor by the Decision on Petition dated November 18, 2003 ("Decision") which ordered that the drawings be entered and that withdrawn claims be restored for consideration." That Decision held that certain withdrawn claims be restored for examination on the merits because they were improperly "restricted out" under election of species practice, when in fact the application did not disclose and claim plural species. Obviously, that holding had nothing to do with petitioner's drawings. Further, the Decision directed the entry of formal drawings but did not indicate whether those drawings, or the originally filed drawings, complied with 37 CFR 1.83, i.e. whether any claims recited structure that petitioner had not illustrated in the drawings (issues 1 and in the appeal brief). Nor did the Decision directing entry of the formal drawings reach the issue of whether claims 3 and 8-10 satisfy the statutory requirements for enablement and definiteness, as argued with respect to issue 3 in the appeal brief. Entry of the formal drawings was directed because they did not illustrate anything not present in the original application. This has nothing to do with whether the language in the original application enables the invention or is either an apt description of the invention or a definite description of the invention.

Claim Status (37 CFR 1.192(c)(3))

37 CFR 1.192(c)(3) requires that the brief contain "[A] statement of the status of ***all the claims*, pending or cancelled, and identifying the claims appealed**. (Emphasis supplied.) Petitioner's brief states that "[C]laims 1-10 are the subject of the appeal. No other claims are pending." Obviously, the second sentence is technically inaccurate, because claims 11-17 are pending, albeit that they are withdrawn from consideration pursuant to 37 CFR 1.142(b), because claims are either pending or they are canceled. Moreover, the point of identifying the claims appealed is to distinguish between which of the pending claims are being appealed. As the pending, but withdrawn, claims are not being appealed, they should be identified in the appeal brief as being withdrawn from consideration under 37 CFR 1.142(b). Petitioner is not entitled to relief on this issue.

Claim Groupings (37 CFR 1.192(c))

The examiner held that the brief was defective because the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments if support thereof in the argument section of the brief. See paper No. 21, dated January 5, 2004, item 6a.

Petitioner's statement in at the top of page 5 of the appeal brief satisfies requirement in 37 CFR 1.192(c) that the brief contain a statement that one or claims do not stand or fall together. All that is required by the regulation of an appellant who does not wish the BPAI to select a single claim from a group of two or more claims to which a given ground of rejection applies and decide the appeal as to all claims to which that ground of rejection applies based upon that selected claim alone is to state that the claims of that group do not stand or fall together. Clearly, stating that "[F]or each ground of rejection which appellant contests herein which applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not stand or fall together" is a statement that the claims in a group of claims subject to a given rejection do not stand or fall together where the claims in the group are argued separately. Therefore, the examiner's holding in item 6a of paper No. 21 is clearly erroneous and will be withdrawn.

The examiner further held that the brief was defective because the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief. See paper No. 21, item 6b.

37 CFR 1.192(c) requires that in addition to the statement that claims in a group of claims do not stand or fall together, that an appellant provide in the argument section of the brief (37 CFR 1.192(c)(8)) an explanation of why the some or all of the claims of the group are believed to be separately patentable.

A review of pages 9-15 in the arguments section of the appeal brief fails to show a single instance in which any claim of any claim group is argued as being **separately** patentable from any other claim of that claim group. Petitioner has, for each ground of rejection over the prior art, identified one or two elements that are lacking in the applied prior art and argued patentability based thereon. With respect to claim group of claims 1-10 that is rejected as anticipated by Neville and Dixon (references actually applied in the alternative in the final rejection), petitioner argued only the diverter structure, an element found in independent claims 1 and 8, and therefore, in every claim in the grouping. With respect to the claim group of claims of claims 1-6 and 8-10 that is rejected for anticipation of claims 1-6 and 8-10 over Watson, petitioner identified the diverter and the drinking spout as elements alleged to be lacking in the reference. Both independent claims 1 and 8 include the diverter, while claim 6, dependent on claim 1 and independent claim 8 include the spout (as do claims 9 and 10 dependent thereon). It is simply not clear that petitioner has argued that claim 6 should be patentable even if claim 1 is not, or that claims 9 and 10 should be patentable apart from claim 8. Therefore, petitioner has not presented any explanation of why any claim or claims in this grouping should be independently patentable over any given claim which the BPAI might select, or any identification of which claim or claims are regarded as being separately patentable. With respect to the rejection of claims 4, 5, 9 and 10 for obviousness over Dixon or Neville taken with Rosen, petitioner argues the lack of a fluid diverter in the first two references and the inapplicability of the Rosen reference. Again, no claim in this group is identified as standing apart from

any other claim in the group.

A review of the claim group in which claims 3 and 8-10 are rejected under 35 USC § 112, first paragraph, shows that no claim from that group is argued as standing or falling separately from any other claim n that group.

In summary, the brief clearly fails to argue that any specific claim in any of the claim groups (the group of claims to which a given rejection is applied) does not stand or fall with any of the other claims in that claim group). In fact, no specific claim is identified as not standing or falling with other claims in the same claim group. Therefore, the examiner's holding that the brief is defective because it contains the statement required by 37 CFR 1.192(c)(7), but does not present arguments in support of that statement is correct.

Summary of Relief Granted

In summary:

1. The petition is granted to the extent that the examiner's holding that the brief is defective because it contains material that may arguably be petitionable is clearly erroneous and will be withdrawn.

2. The petition is granted to the extent that the appeal brief is not defective for failing to make a statement on the issue of whether an appealed claim does not stand or fall with other appealed claims, and the objection set forth in paragraph 6a of paper No. 21 is hereby withdrawn.

3. No relief is granted with respect to the examiner's holding that the appeal brief fails to comply with 37 CFR 1.192(c)(3). The examiner's holding is correct because the brief does not mention pending claims 11-16.

4. No relief is granted with respect to the examiner's holding that the appeal brief is defective under 37 CFR 1.192(c)(7) for failing to specifically argue that at least one claim does not stand or fall with the other appealed claims after having stated that the claims do not stand or fall together. See paper No. 21, item 6b.

Petitioner should file a substitute appeal brief which complies with 37 CFR 1.192(c)(3) and 1.192(c)(7). Petitioner is reminded that period for filing the substitute brief continues to run as set in paper No. 21, dated January 5, 2004. See 37 CFR 1.181(f). The application is being forwarded to the Head Supervisory Applications Examiner to refund the $130.00 petition fee to Deposit Account No. 50-2346.

PETITION GRANTED-IN-PART

E. Rollins-Cross, Director
Technology Center 3700

Shawn D. Sentilles, Esq.
Wyatt, Tarrant & Combs, LLP
1715 Aaron Brenner Drive
Suite 800
Memphis, TN 38120-4367

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Paper No. 8

PARK & SUTTON LLP
3255 WILSHIRE BLVD
SUITE 1110
LOS ANGELES CA 90010

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OFFICE OF PETITIONS

In re Application of
Kyung H. Min
Application No. 09/992,361
Filed: November 19, 2001
Attorney Docket No.: 1138.09

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed November 4, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to timely file a reply to the non-final Office action mailed February 28, 2002, which set a shortened statutory period for reply of three (3) months. No extension of time for reply available to petitioner under 37 CFR 1.136(a) was obtained within the allowable period. The application, therefore, became abandoned on May 29, 2002. The instant petition was filed before a Notice of Abandonment could be sent.

The application is being forwarded to Technology Center 2800 for review of the amendment filed on November 4, 2002..

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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SUITE 710
PORTLAND, OR 97201

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AUG 0 2 2007

OFFICE OF PETITIONS

In re Application of	:	
William Ho Chang et al.	:	
Application No. 09/992,420	:	DECISION ON PETITION
Filed: November 18, 2001	:	
Attorney Docket No. 1282-008/MMM	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 7, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 25, 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 application became abandoned on May 26, 2005.

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 after non-final and a terminal disclaimer, (2) the petition fee of $750.00, and (3) a proper statement of unintentional delay.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2154 for appropriate action by the Examiner in the normal course of business on the reply received June 7, 2007.

Frances Hicks
Petitions Examiner
Office of Petitions

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GEORGE O. SAILE & ASSOCIATES
28 DAVIS AVENUE
POUGHKEEPSIE, NY 12603

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AUG 0 3 2004

OFFICE OF PETITIONS

In re Application of	:	
Shih et al.	:	
Application No. 09/992,458	:	DECISION GRANTING PETITION
Filed: November 16, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. TS01-045	:	

This is a decision on the petition, filed May 11, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on May 17, 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) was been rescinded on December 17, 2002. The above-identified application was published on May 22, 2003.

This application is being forwarded to Technology Center AU 2814 to await a reply to the outstanding final Office action mailed December 2, 2003. Failure to timely reply will again result in the abandonment of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-0482. Any telephone inquiries after approximately **September 24, 2004** should be directed to the undersigned at (571) 272-3282.

Liana Chase

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

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ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. 5

MALIN HALEY & DiMAGGIO P.A.
1936 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33316

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AUG 27 2003

OFFICE OF PETITIONS

In re Application of	:	
Nathaniel Heard	:	
Application No. 09/992,478	:	ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. 9692.6807	:	

This is a decision on the petition under 37 CFR 1.137(b), filed July 2, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application (Notice) mailed December 20, 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 February 21, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

The Notice to File Missing Parts of Nonprovisional Application mailed December 20, 2001, additionally required the signed declaration and an abstract. Since petitioner has failed to submit the reply required by 37 CFR 1.137(b)(1), the petition must be dismissed.

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

By mail: Mail Stop PETITION
Commissioner for Patents
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

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

Wan Laymon

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

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COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Paper No. 9

MALIN HALEY & DiMAGGIO P.A.
1936 SOUTH ANDREWS AVENUE
FORT LAUDERDALE, FL 33316

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OFFICE OF PETITIONS

In re Application of	:	
Nathaniel Heard	:	
Application No. 09/992,478	:	ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. 9692.6807	:	

This is a decision on the renewed petition under 37 CFR 1.137(b), filed October 27, 2003, to revive the above-identified application.

The petition is **GRANTED**.

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

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Alexandria, VA 22313-1450
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AUG 29 2007

OFFICE OF PETITIONS

DANIEL S. POLLEY, P.A.
1215 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FL 33301

In re Application of	:	
HEARD, Nathaniel	:	
Application No. 09/992,478	:	DECISION ON PETITION
Filed: November 19, 2001	:	TO WITHDRAW
Attorney Docket No. **9692.6807**	:	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 30, 2007.

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

A review of the file record indicates that the power of attorney to Daniel S. Polley has been returned by the applicant of the patent application on August 02, 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 above-listed address until otherwise notified by applicant.

Telephone inquires concerning this decision should be directed to Michelle R. Eason at 571-272-4231.

T. Williams

Terri Williams
Petitions Examiner
Office of Petitions

cc: **NATHANIEL HEARD**
7556 COLONY PALM DRIVE
BOYNTON BEACH, FL 33436

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 27

THE GRIFFITH LAW FIRM, A P.C.
991 C LOMAS SANTA FE DRIVE
SUITE 450
SOLANA BEACH, CA 92075

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OFFICE OF PETITIONS

In re Application of	:	
Gary S. Hahn, et. al.	:	
Application No. 09/992,491	:	ON PETITION
Filed: November 21, 2001	:	
Attorney Docket No. Sensory 0003.CON3	:	

This is a decision on the petition under 37 CFR 1.137(b), filed January 21, 2005, to revive the above-identified application.

In response to the non-final Office action mailed May 27, 2003, petitioner hereby submits $750 for the petition to revive fee, an amendment, an Information Disclosure Statement (IDS) along with the $180 fee, a Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address, a Statement under 37 CFR 3.73(b), and the statement of unintentional delay.

The Revocation of Power of Attorney with New Power of Attorney and Change of Correspondence Address has been accepted and made of record.

Since petitioner has met the requirements to revive this application, pursuant to 37 CFR 1.137(b), the petition is **GRANTED**.

This application is being forwarded to Technology Center Art Unit 1617, 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

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Paper No. 13

St. Onge Steward Johnston & Reens
986 Bedford Street
Stamford, CT 06905-5619

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OFFICE OF PETITIONS

In re Application of :
Augustinus F. H. Basstein :
Application No. 09/992,509 : ON PETITION
Filed: November 6, 2001 :
Attorney Docket No. 03330-P0011A LHR :

This is a decision on the petition under 37 CFR 1.137(b), filed December 12, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed February 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 May 15, 2003.

The application file is being forwarded to Technology Center AU 3683 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

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BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard,7th Floor
Los Angeles CA 90025-1026

In re Application of	:	
RABBERS, et al.	:	
Application No. 09/992,511	:	DECISION ON PETITION
Filed: November 5, 2001	:	TO WITHDRAW
Attorney Docket No. 005306.P047	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed May 31, 2006.

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

A review of the file record indicates that the power of attorney to Marina Portnova has been revoked by the assignee of the patent application on August 28, 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 Monica A. Graves at 571-272-7253.

Amelia Au
Petitions Examiner
Office of Petitions

cc: **Campbell, Stephenson Asocolese LLP**
4807 Spicewood Springs Rd.
Bldg. 4, Suite 201
Austin, TX 78759

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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/992,511	11/05/2001	David L. Rabbers	005306.P047

CONFIRMATION NO. 6817

OC000000020595134

Lawrence E. Lycke
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Seventh Floor
12400 Wilshire Boulevard
Los Angeles, CA 90025-1026

Date Mailed: 09/27/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 08/28/2006.

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

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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CSA LLP
4807 SPICEWOOD SPRINGS RD.
BLDG. 4, SUITE 201
AUSTIN TX 78759

In re Application of	:	
Rabbers et al.	:	DECISION ON PETITION
Application No. 09/992,511	:	
Filed: 5 November, 2001	:	
Atty Docket No. 005306.P047	:	

This is a decision on the petition, filed on 4 October, 2006, under 37 CFR 1.137(f) which is treated as a petition to revive the above-identified nonprovisional application under the unintentional provisions of 37 CFR 1.137(b).

The petition is **GRANTED**.

Petitioner states that the present nonprovisional application is the subject of a foreign or international application filed on 25 February, 2003. 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 present petition has been found to be in compliance with 37 CFR 1.137(f). Accordingly, the failure to timely notify the Office of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded.

It is noted that petitioner filed a Request to Rescind the Nonpublication Request concurrently with the present petition. A Communication Regarding Rescission of Nonpublication Request and/or Notice of Foreign Filing, showing the projected publication date of 18 January, 2007, was mailed on 10 October, 2006.

The application is being referred to Technology Center Art Unit 2144 for further processing.

Any inquiries concerning this decision may be directed to the undersigned at 571.272.3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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

In re Application of	:
Maximiliano Vasquez et al	:
Serial No.: 09/992,524	: PETITION DECISION
Filed: November 13, 2001	:
Attorney Docket No.: 011823-008120	:

This is in response to the petition under 37 CFR 1.181, filed February 2, 2006, requesting Supervisory review of an examiner's refusal to enter an amendment. The delay in acting on this petition is regretted, however, the paper was not entitled "PETITION" and, therefore, not properly forwarded for consideration by the proper authority.

BACKGROUND

The file history shows that applicants filed an amendment to amend the specification on January 22, 2003, prior to any Office action in the application. The amendment removed the descriptive word "mature" from the description of Figures 2A and 2B. The examiner in the Office action mailed March 15, 2005, objected to the amendment to the specification as changing the scope of the description and thus being new matter. Other rejections of the claims were also made, but are not pertinent to this objection.

Applicants replied on June 20, 2005, submitting new Figures 1A, 1B, 2A and 2B to correct an underlining error in the sequences shown to conform to conventional practice. Applicants also argued that the amendment to the specification should be entered and not objected to as it does not contain new matter, but merely corrects an error in the description of the drawings to that which is actually shown. Applicants offer comparison to other drawings of the application and other published documents showing how mature and immature sequences are shown. Applicants replied to the other rejections of record appropriately. The amendment was considered non-compliant (see Office action mailed June 23, 2005) and a second amendment filed on June 24, 2005, followed by a compliant amendment, filed on July 11, 2005, were provided.

The examiner mailed a Final Office action to applicants on September 29, 2005, maintaining the objection to the amendment to the specification as introducing new matter as well as the other rejections of record.

Applicants filed a Notice of Appeal on February 2, 2006 and this petition. Subsequently applicants have filed an RCE request and an amendment and argument responsive to the last Office action which have been processed accordingly.

DISCUSSION

An application describing an invention by means of a specification and drawings is considered to be complete as of the filing date. However, it is recognized that errors may still be present in such specification and drawings. Such is evidenced by applicants' amendment of Figures 1A, 1B, 2A and 2B during prosecution of this application to conform certain underlining to conventional standards. Such amendment of the drawings did not change the scope of the invention described and has been permitted by the examiner. The examiner, however, has objected to amending the specification to delete the descriptor "mature" in describing Figures 2A and 2B. Applicants argue that the examiner's objection is improper.

Applicants argue and provide reference for the fact that the sequences shown in Figures 2A and 2B relating to the HuZAF antibody shows both the heavy and light portions of the chain, including "leader peptides". The descriptor "mature" in referring to these chains is conventionally associated with chains which do not have "leader peptides". Thus to use the descriptor "mature" in the specification to describe the sequences shown by Figures 2A and 2B is improper and such descriptive error would be readily recognized by one of ordinary skill in the art based on other portions of the specification, such as Figure 3, which does show a "mature" sequence and other publications which also show the same conventional notation.

The examiner argues that the parent of this application did not have the descriptor "mature" deleted from the specification and implies that to do so here would be improper and constitute new matter. However, errors in the specification, especially where the specification is inconsistent with itself or the drawings, may be corrected at any time, even after a patent has issued. On thorough review of the proposed amendment, entering thereof does not introduce new matter and the examiner's objection to the specification as containing new matter, if entered, is not found to be justified. Entry of the amendment is approved and will not be objected to.

The petition is **GRANTED**.

The application will be forwarded to the examiner for further consideration of the RCE and amendment filed June 2, 2006.

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.

John L. LeGuyader
Director, Technology Center 1600

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JJGJR.: 03-05

Paper No: 8

LEARY & ASSOCIATES
3900 NEWPARK MALL RD.
THIRD FLOOR, SUITE 317
NEWARK CA 94560

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APR 0 1 2005

OFFICE OF PETITIONS

In re Application of
Belson :
Application No. 09/992,526 : DECISION
Filing Date: 13 November, 2001 :
Attorney Docket No. BEL1015U :

This is a decision on the petition filed on 18 March, 2005, alleging unavoidable delay under 37 C.F.R. §1.137(a), and, in light of the allegations 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 as considered under 37 C.F.R. §1.181 is **GRANTED**, and the petition under 37 C.F.R. §1.137(a) is **DISMISSED as moot**.

BACKGROUND

The record reflects that:

- it appeared that Petitioner failed to reply timely and properly to a non-final Office action mailed on 15 March, 2004, with reply due absent extension of time on or before 15 June, 2004;
- the application could have gone abandoned after midnight 15 June, 2004;
- however, on 20 September, 2004 (over a 15 September, 2004, certificate of mail on the transmittal), Petitioner filed a reply in the form of an amendment along with a request and

fee for a three- (3-) month extension of time–and, as Petitioner points out–the documentation of Office receipt of the papers and those events described is evidenced in Office records such as PAIR and in Office finance records (a copy of the latter has been placed into the file);

- nonetheless, the Office mailed the Notice of Abandonment on 21 September, 2004;
- on 18 March, 2005, Petitioner filed the instant petition, with fee, a copy of the reply in the form of an amendment and documents evidencing Office receipt of the reply ("Workflow incoming amendment IFW").

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

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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.

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 the Request to
Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[7]

Petitioner evidences timely Office receipt of the reply over a certificate of mail and accompanied by request and fee for extension of time.

CONCLUSION

Because Petitioner satisfied the burdens set forth in Delgar v. Schulyer, the petition under 37 C.F.R. §1.181 hereby is **granted**, and the 21 September, 2004, Notice of Abandonment hereby is vacated; the petition under 37 C.F.R. §1.137(a) is **dismissed as moot**, and the petition fee ($250.00) is waived and is refunded via Treasury check.

The instant application is forwarded to the Technology Center 3700 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

[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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SUITE 500
ARLINGTON, VA 22209

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OFFICE OF PETITIONS

In re Application of :
C. Jay Wack, et al. :
Application No. 09/992,529 : ON PETITION
Filed: November 20, 2001 :
Attorney Docket No. STSPT19CIP :

This is a decision on the petition under 37 CFR 1.137(b), filed April 21, 2004, to revive the above-identified application.

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed January 22, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 23, 2002.

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, the $1,480 extension of time submitted with the petition on April 21, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account number 50-1998.

The Change of Correspondence Address has been accepted and recorded.

The statement claiming large entity status in accordance with 37 CFR 1.17(m) embodied in the petition under 1.137(b) has been made of record and large entity status has been accorded.

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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BAYTOWN TX 77522-2149

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OFFICE OF PETITIONS

In re Application of
Kendrick et al.
Filed: November 6, 2001
Application No. 09/992,590
Attorney Docket No.: 98B014C

DECISION GRANTING PETITION

This is a decision on the request for resealing, filed May 12, 2003, and the petition to expunge filed July 16, 2003.

The request for resealing has been treated as a request to place the papers in compliance with Manual of Patent Examining Procedure (MPEP), Section 724.02, and is granted.

The petition to expunge is granted-in-part.

On July 12, 2002, applicant filed a six page Information Disclosure Statement (IDS). One of the references submitted was a proprietary document, a declaration signed by Scott T. Roger. This proprietary document was cited on the IDS.

On July 16, 2003, petitioner filed a new IDS. Petitioner also filed a supplemental IDS and one page listing that cites only the proprietary document, and includes the Roger declaration in a sealed, labeled envelope in accordance with MPEP § 724.02.

Petitioner requests that the IDS filed July 12, 2002, along with the IDS and the proprietary document be expunged from the record and returned to Applicant, explaining that these were intended to be submitted in compliance with the MPEP. Petitioner further requests that all other references which accompanied the submission filed July 12, 2002, remain in the file. The request to "reseal" is not granted, because the originally filed application papers do not reflect an intention for the Roger declaration to be maintained in confidence because the procedures set forth in the MPEP were not followed. Moreover, since the original documents were not "sealed" they cannot be "resealed". The declaration has been removed from the stack of references and discarded. A duplicate copy was supplied in compliance with the MPEP. The petition to expunge is granted in part because rather than being expunged and returned, the first copy of the Roger declaration has been expunged and destroyed.

The listing submitted July 12, 2002 will remain in the file to preserve the prosecution history. Both Information Disclosure Statements filed July 16, 2003, have been made of record in the file.

After mailing of this decision, the application will be forwarded to Technology Center 1700 for examination in due course. The petition fee set forth in 37 CFR § 1.17(i) will be charged to petitioner's deposit account 19-0089.

Telephone inquiries concerning this communication should be directed to Terry J. Dey at (703) 308-1201.

Karin Ferriter

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

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SUTHERLAND ASBILL & BRENNAN LLP
999 PEACHTREE STREET, N.E.
ATLANTA, GA 30309

Mail Date: 04/21/2010

Applicant	: Mario P. Manfre	: DECISION ON REQUEST FOR
Patent Number	: 7599888	: RECALCULATION of PATENT
Issue Date	: 10/06/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/992,596	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/14/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

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

The patent term adjustment has been determined to be **1720** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of PTA days determined by the recalculation.

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

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

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

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

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Paper No. 16

WILLIAM ROBINSON
NORRIS McLAUGHLIN & MARCUS
721 ROUTE 202-206
BRIDGEWATER, NJ 08807

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OFFICE OF PETITIONS

In re Application of :
James D. Ralph et al :
Application No. 09/992,612 : NOTICE
Filed: November 13, 2001 :
Attorney Docket No. F-146B :

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 3731 for consideration of the concurrently filed petition under 37 CFR 1.48(a).

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

cc: CARTER DELUCA FARRELL & SCHMIDT
445 BROAD HOLLOW ROAD, SUITE 225
MELVILLE, NY 11747

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CARTER, DELUCA, FARRELL AND SCHMIDT
445 BROAD HOLLOW ROAD, SUITE 225
MELVILLE, NY 11747

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In re Patent of Ralph et al.	:	
Patent No. RE39,089	:	
Issue Date: May 2, 2006	:	Decision on Petition
Application No. 09/992,612	:	
Filing Date: November 12, 2001	:	
Attorney Docket No. 1390-9CON	:	

This is a decision on the petition filed December 14, 2006, which is being treated as a petition under 37 CFR 1.377.

The petition is **dismissed as moot**.

The patent has not expired for failure to pay maintenance fees.

Petitioner states the Patent Bibliographic Data available at the PAIR page on the USPTO website incorrectly indicates the patent has expired.

The Patent Bibliographic Data on PAIR appears to have been corrected as shown by the attached copy of the Bib Data page printed April 2, 2007. Therefore, the petition is dismissed as moot.

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

Attached: Copy of Patent Bibliographic Data Sheet

Patent eBusiness

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- Patent Ownership
- Fees
- Supplemental Resources & Support

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09/992,612 POLYAXIAL PEDICLE SCREW HAVING A THREADED AND TAPERED COMPRESSION LOCKING MECHANISM

Select New Case | Application Data | Transaction History | Image File Wrapper | Continuity Data | Fees | Published Documents | Address & Attorney/Agent

Bibliographic Data

Application Number:	09/992,612	Customer Number:	-
Filing or 371 (c) Date:	11-13-2001	Status:	Patented Case
Application Type:	Re-Issue	Status Date:	04-12-2006
Examiner Name:	REIP, DAVID OWEN	Location:	ELECTRONIC
Group Art Unit:	3731	Location Date:	-
Confirmation Number:	1151	Earliest Publication No:	-
Attorney Docket Number:	337562000901	Earliest Publication Date:	-
Class / Subclass:	606/061	Patent Number:	RE39,089
First Named Inventor:	James Ralph , Oakland, NJ (US)	Issue Date of Patent:	05-02-2006

Title of Invention:	POLYAXIAL PEDICLE SCREW HAVING A THREADED AND TAPERED COMPRESSION LOCKING MECHANISM

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In re Patent No. 6718874
Issue Date: April 13,2004
Application No. 09992627
Filed: November 6,2001
Attorney Docket No. P01016502

:

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

:

This is a decision on the electronic petition, filed September 17,2008 ,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 September 17,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

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

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)
6,718,874	2004-04-13	09/992,627	2001-11-06	P01016502

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	/John Smith/	Date (YYYY-MM-DD)	2008-09-17
Name	John C. Smith	Registration Number	33284

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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HARNESS, DICKEY & PIERCE, P.L.C.
P.O. BOX 828
BLOOMFIELD HILLS MI 48303

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OFFICE OF PETITIONS

In re Application of	:	
MOORES et al.	:	
Application No. 09/992,633	:	ON PETITION
Filed: March 5, 1998	:	
Attorney Docket No. 0275D-000214COA	:	

This is in response to the petition under 37 CFR 1.47(a)[1], filed November 19, 2001.

The petition is **GRANTED.**

The Office notes that status under 37 CFR 1.47 was granted in a parent application (U.S. Serial No. 09/035,586) to the above-identified application. A copy of the properly executed declaration and a copy of the decision according status under 37 CFR 1.47 have been obtained from the parent application and will be made of record in the above-identified application.

The application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in 37 CFR 1.47(c), the Office will dispense with the notice provision since the above-identified application is a continuation of U.S. Serial No. 09/035,586, and notice regarding the filing of U.S. Serial No. 09/035,586 was given to the nonsigning inventor.

This matter is being forwarded to Office of Patent Publication.

Telephone inquiries regarding this decision should be directed to Denise Pothier at (571) 272-4787.

Frances Hicks
Petitions Examiner
Office of Petitions

[1] The petition appears to be a copy of the original petition filed in the parent application (U.S. Serial No. 09/035,586). This filing is being treated as a petition to accord Rule 1.47(a) status in the present application.

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

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SPECIAL PROGRAMS OFFICE
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HARNESS DICKEY & PIERCE
P.O. BOX 828
BLOOMFIELD HILLS, MI 48303

In re Application of
Moores, et al.
Application No. 09/035,586
Filed: March 5, 1998
For: Battery Cooling System

DECISION ACCORDING
STATUS UNDER 37 CFR 1.47(a)

This is in response to the "Renewed Petition Under 37 CFR 1.47(a)," filed August 26, 1999.

The petition is **granted**.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after being presented with the application papers. Specifically, the declarations of facts of Robert Bradus and W. R. Duke establish that the inventor was mailed a complete copy of the application papers, but failed to respond to the request that he sign the declaration.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(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.

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

Telephone inquiries regarding this decision should be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

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OCT 1 1 2005

Director's Office
Group 3700

James K. Poole, Esq.
P.O. Box 925
Loveland, CO 80539

In re Application of
VALDEZ-CAMPBELL, MARILYN
Application No.: 09/992,641
Filed: November 13, 2001

DECISION ON PETITION

This is a decision on petitioner's request filed October 12, 2004, requesting withdrawal of the holding of abandonment of the above-identified application because the applicant made a bona fide attempt in responding to the office action mailed on December 15, 2003. Petitioner's response was received on April 19, 2004 and included a one-month extension of time and a certificate of mailing dated April 15, 2004.

The petition is granted.

MPEP 706.02(c) states in part:

> Note that as an aid to resolving public use or on sale issues, as well as to other related matters of 35 U.S.C. 102(b) activity, an applicant may be required to answer specific questions posed by the examiner and to explain or supplement any evidence of record. See 35 U.S.C. 132, 37 CFR 1.104(a)(2). Information sought should be restricted to that which is reasonably necessary for the examiner to render a decision on patentability. The examiner may consider making a requirement for information under 37 CFR 1.105 where the evidence of record indicates reasonable necessity. See MPEP § 704.10 et seq.

Petitioner argues that a good faith effort to respond was made to the information requirement by the examiner. It was believed that the requirement was made under 37 CFR 1.105 and that if a statement that information required to be submitted is not readily available to the party from which it is requested, it will be accepted as a complete reply.

While it appears that examiner required information under 35 U.S.C. 132 and 37 CFR 1.104(a)(2) rather than 37 CFR 1.105, petitioner made an effort to respond to all requirements by the examiner and made a statement as allowed under 37 CFR 1.105 that the information (statement from the other parties) was unavailable at the time of response. In view of this statement, the amendment filed on April 19, 2004 is at the minimum a bona fide attempt to respond to the office action of December 13, 2003. As such, the examiner should have considered the amendment a bona fide attempt to the Office Action.

In view of the above, the Notice of Abandonment mailed August 13, 2004 is in error and is hereby vacated. The holding of abandonment is withdrawn.

The abandonment will be withdrawn and the amendment of April 19, 2004 entered. The application will be forwarded to the examiner for an office action not inconsistent with this decision.

Summary: Holding of Abandonment Withdrawn.

Richard A. Bertsch

Richard A. Bertsch, Director
Technology Center 3700

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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DATE: March 11, 2005
TO: Certificates of Correction Branch
FROM: Dean A. Reichard
SPE, Art Unit 2831
SUBJECT: REQUEST FOR CERTIFICATE OF CORRECTION

Please issue a Certificate of Correction in U. S. Letters Patent No. 6,710,245 issued March 23, 2004, as specified on the attached Certificate.

Dean A. Reichard 3/11/05
Dean A. Reichard, SPE
Art Unit 2831

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE

Patent No. 6,710,245
Patented: March 23, 2004

On petition requesting issuance of a certificate for correction of inventorship pursuant to 35 U.S.C. 256, it has been found that the above identified patent, through error and without deceptive intent, improperly sets forth the inventorship. Accordingly, it is hereby certified that the correct inventorship of this patent is:

Mark A. Roesch, Brecksville; Dennis P. Revlock, Sr., Medina; David A. Maccarone, Hudson, all of OH (US)

Dean A. Reichard 3/11/05
Dean A. Reichard
Supervisory Patent Examiner
Art Unit 2831

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DUCKOR SPRADLING METZGER & WYNNE
A LAW CORPORATION
3043 4th Ave.
SAN DIEGO CA 92103

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OFFICE OF PETITIONS

In re Application of

GIRALDIN, Patrick W. et al.
Application No. 09/992,668
Filed: November 13, 2001
Attorney Docket No. **8591-103**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed January 14, 2008.

The request is **NOT APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

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

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

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

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **GUEST TECHNOLOGIES, LLC**
22941 MILL CREEK ROAD
LAGUNA HILLS, CA 92653

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A LAW CORPORATION
3043 4TH AVE.
SAN DIEGO CA 92103

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OFFICE OF PETITIONS

In re Application of

GIRALDIN, Patrick W.
Application No. 09/992,668
Filed: November 13, 2001
Attorney Docket No. **8591-103**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed April 18, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Bernard Kleinke on behalf of all attorneys of record who are associated. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The correspondence address of record has been changed and the new correspondence address is the address indicated below.

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

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **GUEST TECHNOLOGIES, LLC**
22941 MILL CREEK ROAD
LAGUNA HILLS, CA 92653

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 4

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AUG 04 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

ELLIOT FURMAN
SKYMOON VENTURE'S
3045 PARK BLVD.
PALO ALTO, CA 94306

In re Application of	:	
Venkatachary et al.	:	
Application No. 09/992,677	:	DECISION ON REQUEST TO
Filed: November 14, 2001	:	WITHDRAW AS ATTORNEY
For: PACKET MATCHING METHOD AND SYSTEM	:	

This is a decision on the Request to Withdraw as Attorney/Agent of record filed on July 7, 2003.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

Elliot Furman is granted the request for withdraw.

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: SKYMOON VENTURES
3045 PARK BLVD.
PALO ALTO, CA 94306

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SHEMWELL MAHAMEDI LLP
4880 STEVENS CREEK BOULEVARD
SUITE 201
SAN JOSE CA 95129

In re Application of :
Venkatachary et al. :
Application No. 09/992,677 : ON PETITION
Filed: November 14, 2001 :
Attorney Docket Number: 103001-1

This is a decision on the petition under 37 CFR 1.137(b), filed August 11, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a complete reply to the non-final Office Action of January 17, 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 April 8, 2005. A Notice of Abandonment was mailed on August 11, 2006.

This Petition is hereby **Granted**.

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

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

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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#8

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Office of the Director
Group 3600

Schlumberger Technology Corporation
Schlumberger Reservoir Completions
P.O. Box 1590
Rosharon, TX 77583-1590

In re Application of
Peter A. Goode, et al.
Application No. 09/992,681
Filed: November 19, 2001
For: DOWNHOLE MEASUREMENT APPARATUS AND TECHNIQUE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply applicant's Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181 filed in the United States Patent and Trademark Office on October 30, 2003.

The petition is **DISMISSED**.

A review of the file record indicates that the application was held abandoned for failure to timely file a proper response to the Office action dated March 17, 2003 and a Notice to that effect was mailed on October 21, 2003.

Petitioner states that a response to the above noted Office action was filed on March 26, 2003 by facsimile transmission. The copy of the response submitted with the petition includes a Certificate of Transmission dated March 26, 2003.

Any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must include the following requirements:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the *original* response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512).

While meeting requirement (1) above the petition fails, under requirement (2), to also include a statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of sending the *original* response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate.

Further, the copy of the facsimile transmission report having the March 26, 2003 date cannot be relied upon as proof of timely filing the response. See section 512 of the MPEP.

It is noted applicants' correspondence address in the petition is different than that shown in the response attached thereto, *and* the address provided in declaration. To avoid any future confusion applicant should promptly notify the Office of the correct correspondence address. For this decision only a copy of this decision will be sent to the Houston address.

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(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

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

SNM/cps: 1/13/03

cc:

Schlumberger Reservoir Completions
14910 Airline Rd.
P.O. Box 1590
Houston, TX 77583-1590

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COMMISSIONER FOR PATENTS
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MAR 17 2004

Office of the Director
Group 3800

Schlumberger Technology Corporation
Schlumberger Reservoir Completions
14910 Airline Road
P.O. Box 1590
Rosharon TX 77583-1590

In re Application of
Peter A. Goode
Application No. 09/992,681
Filed: November 19, 2001
For: DOWNHOLE MEASUREMENT APPARATUS AND TECHNIQUE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to applicant's renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on February 17, 2004.

The petition is **DISMISSED**.

Petitioner states that a response to the above noted Office action was filed on March 26, 2003 by facsimile transmission. The copy of the response submitted with the petition includes a Certificate of Transmission dated March 26, 2003.

Any petition to withdraw the holding of abandonment based upon a Certificate of Transmission by facsimile must provide the following:

(1) A copy of the original response bearing a signed Certificate of Transmission which includes the date of signing; and

(2) A statement under 37 CFR 1.8(b)(3) attesting to the personal knowledge of transmitting the original response on the date indicated on the Certificate of Transmission (see 37 CFR 1.8 and MPEP 512).

While meeting requirement (1) above, the renewed petition fails under requirement (2) to provide a proper statement under 37 CFR 1.8(b)(3) attesting to personal knowledge of sending the original response by facsimile transmission on the date indicated on the certificate, by the person who signed the certificate. Although a 37 CFR 1.8(b)(3) statement has been provided, it fails to identify the document and the date it was transmitted.

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(b) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition to Withdraw the Holding of Abandonment Under 37 CFR 1.81."

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

KJD/mjz: 3/12/04

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Office of the Director
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Schlumberger Reservoir Completions
14910 Airline Road
P.O. Box 1590
Rosharon, TX 77583-1590

In re Application of
Peter A. Goode et al.
Application No. 09/992,681
Filed: November 19, 2001
For: DOWNHOLE MEASUREMENT APPARATUS AND TECHNIQUE

DECISION ON PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

This is in reply to applicant's renewed petition to withdraw the holding of abandonment under 37 CFR 1.181, filed in the United States Patent and Trademark Office on March 29, 2004.

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

☐ Postcard receipt being dated_____.

☐ USPTO return facsimile receipt dated _____ which identifies the application by serial number and the type of Response that was filed on that date.

☒ Certificate of Mailing/Transmission signed on March 26, 2003 . and supported by a statement under 37 C.F.R. 1.8(b)(3).

☐ Hand Delivery Receipt of the specific documents submitted dated _____.

☐ Certificate of Transmission of CPA under 37 C.F.R. 1.6 filed on _____.

☐ Express Mail Receipt under 37 C.F.R. 1.10 dated _____.

This application is being forwarded to the Supervisory Legal Instruments Examiner for entry of the response filed with the petition, then to the examiner for prompt action on the response.

vdb/ 5/6/04

Randolph A. Reese
Special Programs Examiner
Group 3600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Paper No. 9

KAYE SCHOLER LLP
425 PARK AVENUE
NEW YORK, NY 10022-3598

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OFFICE OF PETITIONS

In re Application of :
Raymond V. Damadian :
Application No. 09/992,733 :
Filed: November 14, 2001 :
Attorney Docket No. 23242-1019 :

ON PETITION

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 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 February 11, 2002.

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 $1450 extension of time submitted with the petition on July 30, 2003 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 (703) 306-5684.

The application file is being forwarded to 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. 12

KAYE SCHOLER LLP
425 PARK AVENUE
NEW YORK, NY 1022-3598

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OFFICE OF PETITIONS

In re Application of	:	
Raymond V. Damadian et al	:	
Application No. 09/992,733	:	DECISION ON PETITION
Filed: November 14, 2001	:	UNDER 37 CFR 1.8(b)
Attorney Docket No. 23242-1019	:	

This is a substitute decision on the petition under 37 CFR 1.137(b), filed July 30, 2003, and a decision on the supplemental petition filed on August 26, 2003. These petitions, which for the reasons stated below, are being treated as a petition under 37 CFR 1.8(b) requesting withdrawal of the holding of abandonment in the above-identified application. The decision mailed August 20, 2003 granting the petition under 37 CFR 1.137(b) is vacated.

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

This application was held abandoned for failure to timely reply to the Notice to File Missing Parts of Nonprovisional Application, Filing Date Granted, mailed December 10, 2001, which set a two month extendible period for supplying the items noted thereon; namely, an executed oath or declaration and a $130 surcharge fee for the late filing of an executed oath or declaration. A Notice of Abandonment was mailed on May 30, 2003.

In both the petition filed July 30, 2003 and the supplemental petition filed August 26, 2003, petitioner states that a reply to the Notice was in fact timely filed. To support this assertion, petitioner has supplied a copy of the previously filed correspondence bearing a certificate of mailing date of February 4, 2002 and a copy of a return postcard which acknowledges receipt by the U.S. Patent and Trademark Office (USPTO) on July 23, 2003, which date is over 17 months from the date of the alleged mailing, of the following items: Transmittal Letter with mailing certificate under 37 CFR 1.8(a); Declaration and Power of Attorney; copy of notification; and an Assignment and Recordation Cover Sheet.

The reply stated to have been mailed via certificate of mailing on February 4, 2002 cannot be located. However, failure to

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receive correspondence which includes a certificate of mailing is addressed in 37 CFR 1.8(b), reproduced below:

> In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:
>
> (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,
>
> (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and
>
> (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petitions comply with the provisions of 37 CFR 1.8(b) in that the certificate of mailing dated February 4, 2002 and the statement of the previously timely mailing of the reply to the Notice of December 10, 2001 were done by petitioner herein. Accordingly, the Notice of Abandonment mailed on May 30, 2003 is hereby vacated and the holding of abandonment withdrawn.

As requested, the $1,300 petition fee submitted on July 30, 2003 will be refunded to petitioner's deposit account in due course.

This application is being forwarded to Technology Center AU 2859 for 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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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

LICATA & TYRRELL PC
66 E MAIN STREET
MARLTON, NJ 08053

COPY MAILED

FEB 27 2002

OFFICE OF PETITIONS

In re Application of :
Hongjiang Wu et al :
Application No. 09/992,738 :
Filed: November 14, 2001 :
Attorney Docket No. ISPH-0614 :

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 Initial Patent Examination Division.

Wan Laymon

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, D.C. 20231
www.uspto.gov

Paper No. _____

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

COPY MAILED

MAR 1 2 2003

OFFICE OF PETITIONS

In re Application of :
James A. Kendrick, et al :
Application No. 09/992,770 :
Filed: November 6, 2001 :
Attorney Docket No. 98B014B :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(c)(3) to withdraw the above-identified application from issue after payment of the issue fee, filed by facsimile transmission on March 1, 2003 and supplemented on March 11, 2003. See 1233 *Official Gazette* 54 (April 11, 2000).

The petition is **GRANTED**.

Petitioners request that the application be withdrawn from issue to permit abandonment for consideration of an Information Disclosure Statement in a continuing application under 37 CFR 1.53(b).

It does not appear that the instant petition is signed by an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Abraham Hershkovitz appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. However, if Mr. Hershkovitz desires to receive correspondence regarding this file, the appropriate power of attorney documentation must be submitted. A courtesy copy of this decision is being mailed to Mr. Hershkovitz, 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.

The application is withdrawn from issue for express abandonment in favor of continuing application No. 10/260,011 deposited on March 11, 2003.

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

After receipt of the application in the Office of Petition, the application will be forwarded to the Files Repository as an abandoned file.

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

cc:

Abraham Hershkovitz
Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. _____

Date : March 11, 2003

TO : Director, Office of Patent Publication

FROM : Office of the Deputy Commissioner
for Patent Examination Policy

SUBJECT : Withdrawal from Issue of

Applicant(s) : JAMES A. KENDRICK, et al.
Application No. : 09/992,770
Filed : November 6, 2001

The above-identified application has been assigned Patent No. 6,534,603 and an issue date of March 18, 2003.

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

Do not refund the issue fee.

The following erratum should be published in the Official Gazette if the above-identified application is published in the OG of March 18, 2003:

"All reference to Patent No. 6,534,603 to JAMES A. KENDRICK, ET AL. of LOUISIANA for CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL appearing in the Official Gazette of March 18, 2003, should be deleted since no patent was granted."

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
Washington, DC 20231
www.uspto.gov

Bib Data Sheet

CONFIRMATION NO. 9946

SERIAL NUMBER	FILING DATE / RULE	CLASS	GROUP ART UNIT	ATTORNEY DOCKET NO.
10/260,011			1711	P23436.P02

APPLICANTS

James Austin Kendrick, Baton Rouge, LA;
Thomas W. Towles, Baton Rouge, LA;
Scott Thomas Roger, Baton Rouge, LA;

**** CONTINUING DATA ****************************

This application is a CON of 09/992,770 11/06/2001 PAT 6,534,603
which is a CIP of 09/955,729 09/19/2001
which is a DIV of 09/679,959 10/05/2000 PAT 6,319,997
which is a DIV of 09/313,818 05/18/1999 PAT 6,204,344
which is a CIP of 09/080,412 05/18/1998
and is a CIP of 09/081,392 05/18/1998 PAT 6,281,300
which claims benefit of 60/078,859 03/20/1998

**** FOREIGN APPLICATIONS **********************

		STATE OR COUNTRY	SHEETS DRAWING	TOTAL CLAIMS	INDEPENDENT CLAIMS
Foreign Priority claimed	☐ yes ☐ no	LA			
35 USC 119 (a-d) conditions met	☐ yes ☐ no ☐ Met after Allowance				
Verified and Acknowledged	Examiner's Signature Initials				

ADDRESS

ExxonMobil Chemical Company Law Technology
P O Box 2149
Baytown ,TX 77522-2149

TITLE

CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

FILING FEE RECEIVED		
0.00	FEES: Authority has been given in Paper No. _____ to charge/credit DEPOSIT ACCOUNT No. _____ for following:	☐ All Fees ☐ 1.16 Fees (Filing) ☐ 1.17 Fees (Processing Ext. of time) ☐ 1.18 Fees (Issue) ☐ Other _____ ☐ Credit

Associate Power Of Attorney Or Agent			Docket No. 98B014B
In Application Of:			
Serial No: 09/992,770	Filing Date November 6, 2001	Examiner Terressa M BOYKIN	Group Art Unit 1711
Invention:			

To The Assistant Commissioner For Patents:

Please recognize the following as Associate Attorney or Agent in this Application. Please continue to send correspondence to the Attorney of Record.

Name: **Abraham Hershkovitz**

Reg . No.: 45,294

Address: **Greenblum & Bernstein**
1950 Roland Clarke Place
Reston , Virginia 20191

Tel. No. (703) 716-1191

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MAR 11 2003
OFFICE OF PETITIONS

Dated: 2/20/03

Signature of Principal Attorney or Agent of Record

Frank E. Reid, Reg. No.: 37,918
ExxonMobil Chemical Company Law Technology
P.O. Box 2189
Houston, Texas 77252-2189

Telephone: 1-281-834-1743
Facsimile: 1-262-313-4791

I certify that this document is being deposited on _____ with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Signature of Person Mailing Correspondence

Typed or Printed Name of Person Mailing Correspondence

Registration Number & Address of Principal Attorney or Agent of Record

P23436.A01

RECEIVED
MAR 11 2003
OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :J. KENDRICK et al

Office of Petitions

Appl. No. :09/992,770

Petitions Examiner: Sherry Brinkley

Filed :November 6, 2001

For :CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

EXPRESS ABANDONMENT

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

Sir:

Applicant is hereby expressly abandoning the above-identified application in favor of a concurrently filed continuing application. This express abandonment is to take effect no earlier than the date of filing accorded to the continuing application.

Please direct any questions to the undersigned.

Respectfully submitted,
J. KENDRICK et al

Abraham Hershkovitz
Reg. No. 45,294

March 10, 2003

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

P23436.A01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :J. KENDRICK et al

Appl. No. :09/992,770

Filed :November 6, 2001

For :CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

Office of Petitions

Petitions Examiner: Sherry Brinkley

EXPRESS ABANDONMENT

RECEIVED
MAR 11 2003
OFFICE OF PETITIONS

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

Sir:

Applicant is hereby expressly abandoning the above-identified application in favor of a concurrently filed continuing application. This express abandonment is to take effect no earlier than the date of filing accorded to the continuing application.

Please direct any questions to the undersigned.

COPY

Respectfully submitted,
J. KENDRICK et al

Abraham Hershkovitz
Reg. No. 45,294

March 10, 2003

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

J120039.A03

Certification of Transmission

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No (703) 308 - 6916 on 3/1/03 (Date)
Typed or printed name of person signing this certificate:
Abraham Hershkovitz
Signature: [signature]

FAX RECEIVED
MAR 0 1 2003
PETITIONS OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :J. KENDRICK et al

Appl. No. :09/992,770

Filed :November 6, 2001

For :CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

Office of Petitions

Petitions Examiner: Frances Hicks

PETITION UNDER 37 C.F.R. 1.313(c)(2)
REQUESTING WITHDRAWAL OF THE APPLICATION FROM ISSUE

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

Sir:

This is a Request for Withdrawal from Issue of the above-identified application.

The issue fee has been paid and the above-identified application is scheduled to issue as a patent on March 18, 2003.

Applicant's representative has recently become aware of additional prior art which is not of record in the above-identified application. In order to have this prior art considered, Applicant needs to have the above-identified application withdrawn from issue and have the prior art submitted in an IDS along with a Request for Continued Examination under 37 C.F.R. 1.114.

J120039.A03

Additionally, Applicant filed on February 14, 2003, a Petition under 37 C.F.R. §1.59(b) to Expunge Information Submitted under MPEP § 724.02 in the above-identified application. Applicant has not yet received an indication from Senior Legal Advisor Ferriter whether the Petition under 37 C.F.R. §1.59(b) has been considered. If the Petition under 37 C.F.R. §1.59(b) is not decided favorably by March 11, 2003 (one week before the scheduled date of issuance of the patent maturing from the above-identified application), in an abundance of caution, Applicant will have to consider the possibility of expressly abandoning the above-identified application in favor of a concurrently filed continuing application.

In accordance with 37 C.F.R. 1.313 (c)(2) or 37 C.F.R. 1.313 (c)(3), grant of this petition is respectfully requested. For the reasons explained above, Applicant will file by March 11, 2003, (1) an RCE in compliance with 37 C.F.R. 1.114 along with submission of IDS material; or (2) an Express Abandonment under 37 C.F.R. 1.138 along with a continuing application under 37 C.F.R. 1.53(b).

The Commissioner is hereby authorized to charge any fees necessitated by this petition to Deposit Account No. 19-0089.

Respectfully submitted,
J. KENDRICK et al

Abraham Hershkovitz
Reg. No. 45,294

March 1, 2003

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

P23436.A02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :J. KENDRICK et al

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MAR 11 2003
OFFICE OF PETITIONS

Office of Petitions

Appl. No. :09/992,770

Petitions Examiner: Frances Hicks

Filed :November 6, 2001

For :CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

SUPPLEMENT TO PETITION UNDER 37 C.F.R. 1.313(c)(3)
REQUESTING WITHDRAWAL OF THE APPLICATION FROM ISSUE

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

Sir:

This is a Supplement to the Request for Withdrawal from Issue filed on March 1, 2003 in the above-identified application.

The issue fee has been paid and the above-identified application is scheduled to issue as a patent on March 18, 2003.

For the reasons given in the Petition filed on March 1, 2003, Applicant is expressly abandoning the above-identified application as of the filing date granted to a concurrently filed continuing application.

In accordance with 37 C.F.R. 1.313 (c)(3), grant of this petition is respectfully requested.

03/12/2003 AKELLEY 00000008 190089 09992770
01 FC:1460 130.00 CH

While a fee is not believed to be required by the filing of this Supplement, the Commissioner is hereby authorized to charge any fees necessitated by this Supplement to Deposit Account No. 19-0089.

Respectfully submitted,
J. KENDRICK et al

Abraham Hershkovitz
Reg. No. 45,294

March 10, 2003
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

P23436.A02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
MAR 1 1 2003
OFFICE OF PETITIONS

Applicant :J. KENDRICK et al

Appl. No. :09/992,770

Filed :November 6, 2001

For :CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

Office of Petitions

Petitions Examiner: Frances Hicks

SUPPLEMENT TO PETITION UNDER 37 C.F.R. 1.313(c)(3)
REQUESTING WITHDRAWAL OF THE APPLICATION FROM ISSUE

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

COPY

Sir:

This is a Supplement to the Request for Withdrawal from Issue filed on March 1, 2003 in the above-identified application.

The issue fee has been paid and the above-identified application is scheduled to issue as a patent on March 18, 2003.

For the reasons given in the Petition filed on March 1, 2003, Applicant is expressly abandoning the above-identified application as of the filing date granted to a concurrently filed continuing application.

In accordance with 37 C.F.R. 1.313 (c)(3), grant of this petition is respectfully requested.

While a fee is not believed to be required by the filing of this Supplement, the Commissioner is hereby authorized to charge any fees necessitated by this Supplement to Deposit Account No. 19-0089.

Respectfully submitted,
J. KENDRICK et al

Abraham Hershkovitz
Reg. No. 45,294

March 10, 2003
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191

UNITED STATES PATENT AND TRADEMARK OFFICE

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

KAPLAN & GILMAN, L.L.P.
900 ROUTE 9 NORTH, SUITE 104
WOODBRIDGE, NJ 07095

COPY MAILED

JUN 1 0 2004

OFFICE OF PETITIONS

In re Application of	:	
Todres Yampel	:	
Application No. 09/992,773	:	NOTICE
Filed: November 14, 2001	:	
Attorney Docket No. 030/3		

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 2174.

Irvin Dingle
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: 6/10/04

2 Serial/Patent # 09/992,773

	3 Please refund the following fee(s):	4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			$
	Amendment			$
	Extension of Time			$
	Notice of Appeal/Appeal			$
	Petition			$
	Issue			$
	Cert of Correction/Terminal Disc.			$
	Maintenance			$
	Assignment			$
X	Other 1461		6/7/04	$ 65.

7 TOTAL AMOUNT OF REFUND $ 65.

8 TO BE REFUNDED BY:

	Treasury Check
X	Credit Deposit A/C #:

9 11--0223

10 REASON:

X	Overpayment
	Duplicate Payment
	No Fee Due (Explanation):

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: Irvin Dingle TITLE: Paralegal

SIGNATURE: [signature] PHONE: 306-5684

OFFICE: Petitions

****

THIS SPACE RESERVED FOR FINANCE USE ONLY:

APPROVED: [signature] DATE: 6/10/04

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

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

FORM PTO 1577
(01/90)

RECEIVED
CENTRAL FAX CENTER
OCT 1 1 2006

PTO/SB/83 (04-05)
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	09/992,786
	Filing Date	November 13, 2001
	First Named Inventor	John E. BARNES
	Art Unit	1764
	Examiner Name	J. Leung
	Attorney Docket Number	220772008900

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

Approved 11-30-06
Jacqueline M. Stone, Director
Technology Center 1700/2900

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

[X] all the attorneys/agents of record.

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

[ ] the attorneys/agents associated with Customer Number [ ]

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

The reasons for this request are:

Client requested transfer

CORRESPONDENCE ADDRESS

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

[ ] The address associated with Customer Number: [ ]

OR

[X] Firm or Individual Name	D. Brit Nelson Locke Liddell & Sapp LLP				
Address	3400 Chase Tower 600 Travis Street				
City	Houston	State	TX	Zip	77002-3095
Country	U.S.A.				
Telephone	(713) 226-1361	Email	www.lockeliddell.com		
Signature					
Name	Charles D. Holland	Registration No.	35,196		
Date	October 11, 2006	Telephone No.	(650) 813-5832		

NOTE: Withdrawal is effective when approved rather than when received. Unless there are at least 20 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.

I hereby certify that this correspondence is being transmitted via facsimile (fax no.571-273-8300) to the USPTO Commissioner for Patents at P.O. Box 1450 Alexandria, VA 22313-1140

Dated: October 11, 2006 Signature: (Lindsay Seydel)

pa-1102138

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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NOV 12 2008

OFFICE OF PETITIONS

LAW OFFICE OF DALE B. HALLING, LLC
655 SOUTHPOINTE CT, SUITE 100
COLORADO SPRINGS CO 80906

In re Application of	:	
Kirstan Vandersluis, et. al.	:	
Application No. 09/992,791	:	ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. XAW-0103	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 20, 2008, to revive the above-identified application.

The petition is **DISMISSED**.

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

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 September 10, 2007. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). Since the amendment submitted on December 17, 2007 does not *prima facie* place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

Further, Petitioner should note that the Examiner has responded to the Amendment after Final with an Advisory Action Form (copy enclosed).

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 Denise Williams at (571) 272-8930.

Brian W. Brown
Petitions Examiner
Office of Petitions

Enclosure: Examiner's Advisory Action Form

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/992,791	Applicant(s) VANDERSLUIS ET AL.	
	Examiner BARBARA N. BURGESS	Art Unit 2457	

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

THE REPLY FILED 17 December 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 3 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: *NONE*.
   Claim(s) objected to: *NONE*.
   Claim(s) rejected: *1-18*.
   Claim(s) withdrawn from consideration: *NONE*.

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 notes below.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

The Office notes the following argument(s):
(a) Prompt does not mention XML.
(b) Prompt does not mention anything about a bizdocument.
(c) Prompt does not mention anything about the bizdocument defining a data message.
(d) Prompt does not provide a client system the ablility to request a specific bizdocument.

Applicant's arguments have been considered but are not persuasive.

In response to:
(a) Prompt teaches the user accessing the Internet and processes HTML, XML, XSL, and other languages to generate images on the user's display. Prompt further teaches the user accesing directories/databases. Mapping, translating, encoding relational objects, such as tables, columns, attributes, into external format (XML) to be accessed by the user is taught. Directory/database information is encoded into a standard format, such as XML, and stored. This information is accessed by the user (paragraphs [0142, 0159, 0167-0169, 0174]). Therefore, Prompt indeed discloses XML.

(b)-(c) A bizdocument is a document or data containing business information.
Prompt teaches directories/databases storing data that can be used to drive e-commerce and e-business appication. Users can locate specific data records with specific information such as a sales total, an inventory level, price point from the directory/database. Prompt further teaches a company's sales representatives have need to access customer's expenditures, customer and vendor receivables, payables, purchases, and sales volume. This information is accessed using the directory/database (paragraphs [0024-0025, 01130121, 0124]).
Therefore, Prompt, undoubtedly, discloses bizdocuments defining a data message.

(d) Prompt teaches users browsing and/or searching the directory/database to find data needed. They can query with simple commands to search for information needed. With the address of a specific data record, a user can locate very specific information such as sales totals. Hierachical computing system, including one or more client computers, user stations, clients, enables users to request data from the directory/database (paragraphs [022, 0025, 0129, 0132, 0168-0169]).
Therefore, Prompt explicitly teaches the client system having the ability to request a specific bizdocument.

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PATENT & TRADEMARK OFFICE

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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Kirstan Vandersluis	EXAMINER:	Burgess, Barbara N
SERIAL NO.:	09/992,791	GROUP:	2157
FILED:	November 19, 2001	CASE NO.:	XAW-0103

ENTITLED: Method for Componentization of Electronic Document Processing

Law Offices of Dale B. Halling
655 Southpointe Court, Suite 100
Colorado Springs, CO 80906

June 13, 2008

PETITION TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 CFR 1.137 (b)

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

Sir:

Applicants respectfully petition under 37 CFR 1.137 (b) that the application captioned above be revived as a pending application of one unintentionally abandoned.

A Petition to Revive an Unintentionally Abandoned Application must be accompanied by (1) a proposed response (unless previously filed), (2) a petition fee, (3) a statement that the abandonment was unintentional, and (4) any required terminal disclaimer. 37 CFR 1.137(b).

(1) A proposed response (copy enclosed) was previously filed on **December 11, 2007**.

(2) The petition fee is enclosed.

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(3) The entire delay in filing the required reply (one day late) from the due date of December 10, 2007 until the filing of the grantable petition was unintentional. The application clearly intended to file a responsive reply. However the PTO failed to

contact the applicant's attorney until May 15, 2008 (mailed) that the response was one day to late. Instead of asking for the money for a one month extension, the PTO decided the case had been abandoned. Note that the PTO has regularly failed to make its required deadlines in this case. For instance the case was filed in November of 2001 and the first Office Action was not received until February 2005. The PTO's first response was over 24 months late. The PTO did not pay the applicant for this delay. The lack of customer service from the PTO and the injustice of charging clients a fee for the delay in this case is unconscionable. The **applicant demands a refund of the difference between this petition and a the cost of a one month delay**.

(4) No terminal disclaimer is required for this case as the case was filed after June 8, 1995.

Applicants respectfully petition that the application captioned above be revived as a pending application.

Respectfully submitted,

(Vandersluis)

By _____
Attorney for the Applicant
Dale B. Halling
Registration No. 38,170
Customer No. 25,007
Phone: (719) 447-1990
Fax: (719) 447-0983

Certificate of Mailing

I hereby certify that a ____Petition____ is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, P.O. Box 1450, Alexandria, VA 22313-1450, on:

6-16-2008
Date

Signature

OIPE IAP84
JUN 20 2008
PATENT & TRADEMARK OFFICE

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Vandersluis	EXAMINER: Burgess, B. N.
SERIAL NO.:	09/992,791	GROUP: 2157
FILED:	November 19, 2001	CASE NO.: XAW-0103

ENTITLED: Method for Componentization of Electronic Document Processing

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Law Offices of Dale B. Halling
655 Southpointe, Suite 100
Colorado Springs, CO 80906

December 10, 2007

REPLY UNDER 35 CFR 1.113

Honorable Commissioner of
Patents and Trademarks
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Responsive to the Office Action dated September 10,, 2007, the applicants hereby respond as follows:

In the Claims

1(Previously Presented). A method for processing and generation of data messages into components comprising the computer-implemented steps of: a. Define a BizDocument containing XML which defines a data message; b. Provide for the ability for Client systems to request a specific BizDocument; c. Upon receipt of a request for a BizDocument, read the BizDocument into an attached memory, perform processing on each element within the BizDocument according to a predefined computer language; d. Send the resulting contents of the attached memory to the requesting Client system.

2(Original). The method of claim 1 wherein the method further comprises the steps of providing the capability to define data sets called BizComponents associated to one or more elements of a message, a BizComponent having a definition that is stored in a separate file or module, or generated by some other process, and the capability of processing a BizComponent during the processing of elements within the BizDocument.

3(Original). The method of claim 2 wherein a BizComponent may include the definition of parameters for which the calling BizDocument or Client will provide actual values.

4(Original). The method of claim 3 wherein a BizComponent may accept a set of elements as input and may provide a set of elements as output.

5(Original). The method of claim 4 wherein a BizComponent may interact with a Server system, or other BizComponent, or other BizDocument to transfer data to or from that Server system.

6(Original). The method of claim 5 wherein a BizComponent may transform data between the required format of the Server system with which it interacts, and the desired format of a message;

7(Original). The method of claim 6 wherein a BizComponent may contain processing instructions which are processed according to a predefined computer language.

8(Original). The method of claim 7 wherein a BizComponent may be considered to belong to a class of BizComponents, and a computer program or code module designed to process BizComponents in that class may be loaded to process the BizComponent.

9(Original). The method of claim 8 wherein the method further comprises the steps of providing the capability for a BizComponent to access a Server system through an intermediate entity called a BizDriver, a BizDriver having a definition stored in a separate file or module, or generated by some other process.

10(Original). The method of claim 9 wherein a BizDriver may include the definition of parameters for which the calling BizComponent will provide actual values.

11(Original). The method of claim 10 wherein a BizDriver may accept a set of elements as input and may provide a set of elements as output.

12(Original). The method of claim 11 wherein a BizDriver may interact with a Server system, to transfer data to or from that Server system.

13(Original). The method of claim 12 wherein a BizDriver may contain processing instructions which are processed according to a predefined computer language.

14(Original). The method of claim 13 wherein a BizDriver may be considered to belong to a class of BizDrivers, and a computer program or code module designed to process BizDrivers in that class may be loaded to process the BizComponent.

15(Original). The method of claim 14 wherein the format of a BizDocument, BizComponent, and BizDriver may be Extensible Markup Language (XML).

16(Original). The method of claim 15 wherein a BizDocument may include the definition of parameters for which the calling Client will provide actual values.

17(Original). The method of claim 16 wherein a BizDocument may accept a set of elements as input and may provide a set of elements as output.

18(Original). The method of claim 17 wherein a BizDocument may contain processing instructions which are processed according to a predefined computer language.

Remarks

Claims 1-18 are at issue. Claims 1-18 stand rejected under 35 USC 102 (e) as being anticipated by Prompt (US Pub. No. 2006,0020586).

Final

The Final is inappropriate and **MUST BE WITHDRAWN**. The Patent Office cites a new reference in the present Office Action. No new search was required, because the amendment to the claims was merely to overcome an indefiniteness rejection. Making the present Office Action Final is not allowed under the rules of Patent Law and does not comport with due process.

Piecemeal Prosecution

The reference, Prompt (US Pub. No. 2006/0020586), if relevant should have been cited in the very first Office Action. The present application has had four Office Actions, three responses, a Pre-Appeal Brief, and Appeal Brief. The last Office Action only rejected the claims based on 35 USC 112 second paragraph. The applicant clearly overcame this rejection and should have received a Notice of Allowance. MPEP 707.07(g) and 37 CFR1.104 require that the PTO provide all valid grounds for rejecting the claims in an application in a single action. This piecemeal examination is not allowed under the law, is expensive for both the applicant and the PTO and a waste of resources and time of both the PTO and the applicant. The applicant demands that the Patent Office quit wasting the applicant's time and resources by citing more irrelevant prior art references.

35 USC 102 (e)

Prompt is concerned with an "Internet directory service or universal addressing scheme" Paragraph 0019. He is not concerned with a method of processing and generation of data messages into components. Prompt is clearly not directed to the same problem as the present application.

Claim 1 recites defining a bizdocument containing XML which defines a data message. The Patent Office points to paragraphs 0025, 0132 and 0159. Paragraphs 0025 and 0132 do not event mention XML. Paragraph 0159 does mention XML, but it describes a module for mapping relational objects into an XML format. This does not mention anything about the bizdocument defining a data message, just a format translator. Nor does it discuss that module contains XML.

Claim 1 recites "providing the ability of a client system to request a specific BizDocument". The Patent Office points to paragraphs 0132, 0137 & 0142. Paragraph 0132 only discusses a virtual directory service VDS. This cannot be the bizdocument since it does not contain XML, nor is a directory defining a data message. Paragraph 0137 just describes a client station and has absolutely nothing to do with a BizDocument. Paragraph 0142 just describes the main memory unit that may have a web browser that can process XML. This is not a Bizdocument that contains XML and defines a data message. Since none of these paragraphs describe anything analogous to a Bizdocument, they clearly do not provide a client system the ability to request a specific Bizdocument.

Claim 1 is clearly allowable. Prompt is no more relevant than the previous prior art cited. The Patent Office must quit stalling and allow the present application.

Claim 2 recites a Bizcomponent that is processed during the processing of the BizDocument. Since Prompt clearly does not have BizDocuments he cannot have BizComponents. Claim 2 is clearly allowable.

Claims 3-14 are allowable for the same reasons as claim 2.

Claim 15 recites that the format of the BizDocument, BizComponent and BizDriver are XML. Prompt does not show any executable components that have an XML format. Claim 15 is clearly allowable.

Claims 16-18 are allowable as being dependent upon an allowable base claim.

Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

(Vandersluis et al)

By _____

Attorney for the Applicant
Dale B. Halling
Phone: (719) 447-1990
Fax: (719) 447-9815
Reg. No. 38,170
Customer No. 25,007

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

12/11/07
Date

Signature (Dale Halling)

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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LAW OFFICE OF DALE B. HALLING, LLC
655 SOUTHPOINTE CT, SUITE 100
COLORADO SPRINGS CO 80906

RECEIVED
JAN 02 2009
OFFICE OF PETITIONS

In re Application of :
Kirstan Vandersluis, et. al. :
Application No. 09/992,791 : DECISION ON PETITION
Filed: November 19, 2001 :
Attorney Docket No. XAW-0103 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed November 25, 2008, to revive the above-identified application.

The renewed 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 Notice of Appeal with $270 fee; (2) the petition fee of $770; and (3) a proper statement of unintentional delay.

Pursuant to 37 CFR 1.26(a) "[t]he Director may refund any fee paid by mistake or in access of that required." In the present situation, payment of the petition fee was required under 37 CFR 1.137(b)(2) and was neither paid by mistake nor in excess. As such, the requested refund is not appropriate and is refused.

The "REPLY UNDER 35 [sic] CFR 1.113", filed December 17, 2007, was not accompanied by either an appropriate petition and fee for an extension of time or an appropriate authorization to charge necessary fees to a deposit account that is provided for under 37 CFR 1.136(a)(3). No other previously filed paper included an appropriate authorization to charge such necessary fees. 35 U.S.C. 154(b) compensates an applicant for delayed issuance of an original patent caused by the United States Patent and Trademark Office.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 2157 for appropriate action by the Examiner in the normal course of business on the reply received.

Brian W. Brown
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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OFFICE OF PETITIONS

Munck Butrus P.C.
PO Drawer 800889
Dallas, Texas 75380

In re Application of
Moles et al.
Application No. 09/992,818
Filed: Nov. 14, 2001

: DECISION GRANTING LETTER

This decision is in response to Applicant's 'GOOD FAITH AND CANDOR LETTER REGARDING PATENT TERM ADJUSTMENT" filed on December 11, 2006 requesting that the USPTO review the PTA determination at the time of the mailing of the notice of allowance.

Applicant's letter concerning PTA is **GRANTED-IN PART.** The Office will adjust the PTA calculation at the time of the mailing of the notice of allowance to reflect a determination of **694 days** of PTA. A copy of the adjusted PTA calculation is provided with this determination.

Applicant asserts that the USPTO may have granted too much PTA at the time of the notice of allowance. Applicant requests review of the PTA determination but did not provide any assert any specific reason for the discrepancy. Applicants find the following periods: 1) 640 days pursuant to 37 CFR 1.702(a)(1); 2) 34 days under 37 CFR 1.702(a)(2). Applicants assert that reduction periods should be two days under 37 CFR 1.702(b) and 5 days under 37 CFR 1.702(b) for the March 6, 2006 submission.

Applicants conclusions are persuasive to the extent herein indicated. The USPTO determination of 640 days is correct and not disputed by applicant. In addition, the Office agrees with applicants assertion that 34 days of Office delay occurred for the Office non-final rejection mailed June 21, 2005. The Office had assessed 44 days due to the clerical error of inputting the date of response by applicants as January 8, 2005 rather than the correct date of January 18, 2005.[1] In addition, the Office did fail to respond to applicants amendment of January 25, 2006 within four months.[2] Accordingly, the Office fail to meet the requirement of 37 CFR 1.702(a)(2) by a period of twenty-five (25) days.

As for applicants' delays, the USPTO reduction of two days is accurate. As for the five days asserted by applicants, the USPTO asserts that the applicant did respond within three months because applicants filed an amendment on January 25, 2006 that placed the application in condition for allowance. Accordingly there was no five day reduction under 37 CFR 1.704(b). In addition, the Office agrees with applicants assessment of a three day delay for the submission

[1]Accordingly, the reduction began on May 19, 2005, day after four month response of 1/18/2005 and ended on June 21, 2005, a 34 day delay.

[2]The reduction began on May 25, 2005 and ended on June 19, 2006.

on January 18, 2005.[3] Accordingly, the correct amount of PTA at the time of the mailing of the notice of allowance is 694 (644+34+25-2-3=694) 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.

Because applicants were providing good faith and candor notice as to the amount of PTA, no fee is being assessed.

Any questions concerning this decision should be directed to Kery Fries, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.

Kery A Fries

Kery A. Fries
Senior Legal Advisor,
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: Adjusted PAIR calculation

[3]The reduction began on January 16, 2005 and ended on January 18, 2005, a three-day delay.

Day : Thursday
Date: 3/22/2007

PALM INTRANET

Time: 10:27:46

PTA Calculations for Application: 09/992818

Application Filing Date:	11/14/2001	PTO Delay (PTO):	709
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	2
Post-Issue Petitions:	0	Total PTA (days):	694
PTO Delay Adjustment:	-13		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
48	03/22/2007	ADJUSTMENT OF PTA CALCULATION BY PTO		13	
40	09/11/2006	MAIL NOTICE OF ALLOWANCE			
39	09/07/2006	ISSUE REVISION COMPLETED			
38	09/05/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
37	09/05/2006	CASE DOCKETED TO EXAMINER IN GAU			
36	09/05/2006	NOTICE OF ALLOWABILITY			
35	08/25/2006	DATE FORWARDED TO EXAMINER			
34	08/21/2006	AMENDMENT AFTER FINAL REJECTION			
33	06/19/2006	MAIL FINAL REJECTION (PTOL - 326)	25		22
32	06/14/2006	FINAL REJECTION			
31	04/18/2006	DATE FORWARDED TO EXAMINER			
30	04/19/2006	MAIL APPEALS CONF. REOPEN PROSEC.			
29	04/14/2006	APPEALS CONF. DECISION, REOPEN PROSEC.			
28	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
27	03/06/2006	REQUEST FOR APPEAL CONFERENCE FILED			
26	03/06/2006	NOTICE OF APPEAL FILED			
25	02/08/2006	MAIL ADVISORY ACTION (PTOL - 303)			
24	02/06/2006	ADVISORY ACTION (PTOL-303)			
23	02/02/2006	DATE FORWARDED TO EXAMINER			
22	01/25/2006	AMENDMENT AFTER FINAL REJECTION			
21	12/01/2005	MAIL FINAL REJECTION (PTOL - 326)			
20	11/28/2005	FINAL REJECTION			
19	10/04/2005	DATE FORWARDED TO EXAMINER			
18	09/23/2005	RESPONSE AFTER NON-FINAL ACTION		2	17
17	06/21/2005	MAIL NON-FINAL REJECTION	44		14

16	06/16/2005	NON-FINAL REJECTION			
15	04/14/2005	DATE FORWARDED TO EXAMINER			
14	01/08/2005	RESPONSE AFTER NON-FINAL ACTION			
13	04/14/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
12	01/18/2005	WORKFLOW INCOMING AMENDMENT IFW			
11	10/15/2004	MAIL NON-FINAL REJECTION	640		-1
10	10/14/2004	NON-FINAL REJECTION			
9	08/19/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	02/25/2004	CASE DOCKETED TO EXAMINER IN GAU			
7	02/20/2003	CASE DOCKETED TO EXAMINER IN GAU			
6	01/14/2003	CASE DOCKETED TO EXAMINER IN GAU			
5	12/12/2001	CASE DOCKETED TO EXAMINER IN GAU			
4	12/06/2001	APPLICATION DISPATCHED FROM OIPE			
3	12/05/2001	CORRESPONDENCE ADDRESS CHANGE			
2	11/29/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/14/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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January 22, 2004

Ivor R. Elrifi
Mintz Levin Cohn Ferris
Glovsky & Popeo
One Financial Center
Boston, MA 02111

In re application of:
Jeffers, etal DECISION ON PETITION
Serial No: 09/992,840
Filed: November 6, 2001
For: TREATMENT OF INFLAMMATORY BOWEL DISEASE
USING GROWTH FACTORS

This is a decision on the petition received by fax on September 23, 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 Nonprovisional Application on December 5, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 6, 2002

On September 23, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice to File Missing Parts of Nonprovisional Application mailed on December 5, 2001.

The petition is hereby GRANTED.

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

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

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

Doshie E. Day
Program Management Assistant
Office initial Patent Examination

2 Enclosures

9-24-03 14E 03CO

Express Mail Label No.: EV 074977235 US
Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)

OIPE JC42
SEP 2 3 2003
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS :	Jeffers, et al.		
ASSIGNEE :	CuraGen Corporation		
SERIAL NUMBER :	09/992,840	EXAMINER :	Not Yet Assigned
FILING DATE :	November 6, 2001	ART UNIT :	Not Yet Assigned
FOR :	TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS		

MAIL STOP PETITION
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313.1450

TRANSMITTAL LETTER

Transmitted herewith for filing in the present application are the following documents:

- ☒ Petition Under 37 C.F.R. §1.181 to Withdraw Holding of Abandonment (3 pages);
- ☒ Exhibit A: Declaration of Richard R. Tomlins (3 pages);
- ☒ Exhibit B: CPI report (2 pages)
- ☒ Exhibit C: Copy of postcard for original application (1page)
- ☒ postcard.

Applicants believe that no fees are due in connection with this submission. However, the Commissioner is authorized to credit any overpayment or charge any deficiencies to Deposit Account No. 50-0311, Reference No. 15966-557A (Cura 57A). A duplicate copy of this transmittal letter is enclosed.

Respectfully submitted,

Kristin E Konzak

Date: September 23, 2003

Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorney/Agent for Applicants
c/o MINTZ, LEVIN
Tel: (617) 542-6000
Fax: (617) 542-2241

Please address all correspondence to Customer Number 30623.

TRA 1835916v1

Express Mail Label No.: EV 074977235 US
Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)

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SEP 2 3 2003
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):	Jeffers *et al.*		
SERIAL NUMBER:	09/992,840	EXAMINER:	Not yet Assigned
FILING DATE:	November 6, 2001	ART UNIT:	Not yet Assigned
FOR:	TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS		

September 23, 2003
Boston Massachusetts

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

PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

1. This paper is in response to a conversation held between the undersigned and a Customer Service Representative in the Office of Initial Patent Examination Division of the U.S. Patent and Trademark Office on August 14, 2003. The Representative indicated that the present application is considered abandoned in view of Applicants' failure to timely file a reply to the Notice to File Missing Parts mailed on December 5, 2001.

2. The undersigned asserts that a full search of the file jacket and docket records for the above-referenced application indicates that the Notice to File Missing Parts was never received by this office. Thus, no Notice to File Missing Parts was ever docketed for response.

3. Applicants therefore respectfully submit that any consideration of Abandonment of the present application is in error, and that such considerations be withdrawn.

4. The statements below are made as to the exact facts that are relied upon to establish the non-receipt of the Notice to File Missing Parts by the office of the Attorney of Record.

5. On November 6, 2001, Attorneys for Applicants filed a Request for a Nonprovisional Application under 37 C.F.R. § 1.53(b) and an unexecuted Combined Declaration and Power of Attorney instructing the Office to address all telephone calls and general correspondence to the undersigned at the address listed therein (same as below). A postcard listing the contents of the filing was also sent and was duly returned bearing a label affixed by the Office indicating an application number of 09/992,840 and as having been received on 11/06/01.

6. A file was created according to the procedures outlined in the Declaration of Mr. Richard Tomlins (Exhibit A).

7. In response to a foreign associate's request for the assignment papers of the present application, on or about July 31, 2003, it came to the undersigned's attention that no correspondence pertaining to this application had yet been received from the Patent Office, including the Official Filing Receipt, Missing Parts, or a Notice of Abandonment.

8. In rendering a decision on this Petition, Attorneys for Applicants also request that the Commissioner consider the following sequence of events: a Notice to File Missing Parts provides two months from the mailing date in which to file a response, for which extensions may be had for an additional five months. Assuming that the Notice to File Missing Parts was mailed on December 5, 2001, as indicated by the Customer Service Rep., the nonextendable deadline to respond would have occurred on July 5, 2002. Presumably a Notice of Abandonment would have been received within several months thereafter. In the instant case, however, no papers have been received even <u>one year</u> after the nonextendable deadline for response had passed. The undersigned respectfully asserts that this time span represents an unusually long delay and supports Applicants' contention that the Notice to File Missing Parts was not received, and therefore could not be replied to in order to avoid abandonment.

9. Under the requirements set forth in 37 C.F.R. § 1.181, the following documents are submitted herewith in support of this Petition:

9.1 a declaration of Mr. Richard Tomlins, Patent Manager for the Offices of the Attorneys of Record (Exhibit A);

9.2 a true copy of the docket record for 15966-557 A, as required by MPEP § 711.03(c), Part II (Exhibit B); and

9.3 a true copy of the return postcard submitted with the present application on November 6, 2001, bearing an official U.S. PTO bar code acknowledging receipt of the items listed thereon on that date (Exhibit C).

10. No fees are believed due with the submission of this Petition. However, the Commissioner is hereby authorized to charge any necessary fees that may be due to Account No. 50-0311, Reference No. 15966-557A (Cura-57A).

11. Applicant respectfully requests that acknowledgement be made of the active status of this application. Should the Commissioner have any questions concerning this petition, he is invited to telephone the undersigned at the number provided.

Respectfully submitted,

Ivor R. Elrifi, Reg. No. 39,529
Kristin E. Konzak, Reg. No. 44,848
Attorney/Agent for Applicants
MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO P.C.
One Financial Center
Boston, MA 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Please address all correspondence to Customer No.: 30623.

TRA 1827104v1

Express Mail Label No.: EV 074977235 US
Date of Deposit: September 23, 2003

Attorney Docket No. 15966-557A (Cura-57A)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):	Jeffers *et al.*		
SERIAL NUMBER:	09/992,840	EXAMINER:	Not yet Assigned
FILING DATE:	November 6, 2001	ART UNIT:	Not yet Assigned
FOR:	TREATMENT OF INFLAMMATORY BOWEL DISEASE USING GROWTH FACTORS		

September 23, 2003
Boston Massachusetts

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

DECLARATION OF RICHARD R. TOMLINS II UNDER 37 C.F.R. §1.68 IN SUPPORT OF RULE 181 PETITION TO WITHDRAW HOLDING OF ABANDONMENT

I, Richard R. Tomlins II, hereby declare as follows:

1. My name is Richard R. Tomlins II, and I am the Patent Manager for the law firm of Mintz, Levin, Cohn, Ferris, Glovsky & Popeo P.C., with offices at One Financial Center, Boston, MA 02111. I make this Declaration based on personal knowledge and in support of the accompanying Request to Withdraw Notice of Abandonment in the above-identified application.

2. I have over 7 years of experience in U.S., PCT, and foreign patent procedures. I am currently responsible for implementing and overseeing the file room and docketing procedures in the Intellectual Property section within Mintz Levin. I am very familiar with these procedures and attest that they are functioning on a routine basis. Below is an outline of the procedures followed by the docketing and file room:

3. Attendant to its Intellectual Property Practice, Mintz Levin has implemented a filing and docketing system whereby files are created for each new matter opened with the USPTO. These

files are then assigned to one or more supervising and responsible attorneys. These files house the record of correspondence between the Office and the attorneys of record, and between the Applicant and the attorneys. For each application, Combined Declarations and Powers of Attorney specifically instruct that all correspondence be mailed to the Attorneys for Applicant. All outside mail, including Actions sent from the USPTO, is received in a central location. It is then date stamped, logged into a spreadsheet, and docketed into a central database ("CPI") shortly after receipt. The Action is subsequently forwarded to the responsible attorney or his/her secretary via hand. Weekly docket reports are prepared for each attorney listing the days on which various actions are due.

4. Upon filing a response to an Action from the USPTO, the attorney or his/her secretary concurrently forwards duplicate paperwork to the docketing department so that the Action for which a response was filed will be de-docketed from the date-due list.

5. On November 6, 2001, the procedures outlined above were followed in this instance and a file was created for the above identified patent application bearing Attorney Docket No. 15966-557 A (Cura-57A). The information was also entered into the central computer database.

6. A full search of the mail, the spreadsheet, the file jacket for 15966-557A, and of the docket records indicates that Mintz Levin has never received a Notice to File Missing Parts in the above-identified application. The Action has never been entered on our central database and has never been included within the weekly docketing reports. No correspondence from the USPTO pertaining to this application has ever been docketed in our central database.

7. Pursuant to MPEP § 711.03(c), Part II, true copies of the docket record for the above-referenced application are enclosed for consideration. These copies show, under the heading "List of Actions", where the Notice to File Missing Parts would have been entered and docketed had it been received.

7. All statements made of my own knowledge are true, and all statements made on information and belief are believed to be true. The statements made herein are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Date: September 23, 2003

Richard R. Tomlins II
Patent Manager
c/o MINTZ LEVIN COHN FERRIS
GLOVSKY & POPEO, P.C.
One Financial Center
Boston, MA 02111
(617) 542-6000

Please address all correspondence to Customer No.: 30623.

TRA 1827222v1

Country Application

Docket Number:	15966-557 A	**SubCase:**	**Country:** US United States of America
Client:	15966 CuraGen Corporation		
Resp. Office:	MA		
Case Type:	PRI	**Application Status:**	Pending
Serial Number:	09/992840	**Filing Date:**	06-Nov-2001
Publication Number:		**Publication Date:**	
Patent Number:		**Issue Date:**	
Parent/PCT Number:		**Parent/PCT Date :**	
Parent Patent Number:		**Parent Issue Date :**	
Tax Schedule:	SE	**Expiration Date:**	
Confirmation Number:		**Patent Term Adjustment:**	0
Agent:			
Agent Reference No.:			
Client Reference No.:	CURA-57 A		
Examiner:		**Group Art :**	

Title: **TREATMENT OF INFLAMMATORY BOWEL DISEASE GROWTH FACTORS**

List Of Actions

Action(s) Due	Due Date		Action Taken
Filing Receipt Rec'd?	06-Feb-2002	Due Date	

User ID: JABligh

Date Created: 09-Nov-2001

Last Update: 22-Jul-2003

Country Application

Tuesday, August 26, 2003 Page: 1

Docket Number: 15966-557 A
SubCase:
Country: US
United States of America

Client: 15966 CuraGen Corporation

Resp. Office: MA

Case Type: PRI
Application Status: Pending

Serial Number: 09/992840
Filing Date: 06-Nov-2001

Publication Number:
Publication Date:

Patent Number:
Issue Date:

Parent/PCT Number:
Parent/PCT Date :

Parent Patent Number:
Parent Issue Date :

Tax Schedule: SE
Expiration Date:

Confirmation Number:
Patent Term Adjustment: 0

Agent:

Agent Reference No.:

Client Reference No.: CURA-57 A

Examiner:
Group Art :

Title: **TREATMENT OF INFLAMMATORY BOWEL DISEASE GROWTH FACTORS**

List Of Actions

Action(s) Due	Due Date		Action Taken
Filing Receipt Rec'd?	06-Feb-2002	Due Date	
Information Disclosure Stmnt	06-Feb-2002	Due Date	18-Jul-2002
Foreign 8M Letter	06-Jul-2002	Due Date	05-May-1955
Foreign 10M Reminder	06-Sep-2002	Due Date	05-May-1955
Foreign 11M Reminder	06-Oct-2002	Due Date	05-May-1955
FOREIGN 12M DEADLINE	06-Nov-2002	Final	05-May-1955
Application Status Check	06-May-2003	Due Date	05-May-1955

User ID: JABligh
Date Created: 09-Nov-2001
Last Update: 22-Jul-2003

Serial No. TBA File No. 15966-557A (CURA-57A) By: IRE/DEJ

Title: Treatment of Inflammatory Bowel Disease Growth . . .

Application of Jeffers et al. Date: 11/6/01

The U.S. PTO Mail Room acknowledges receipt of the following on the date stamped hereon:

[ ] Req. for CPA under 37 CFR 1.53(d)
[ ] Change of Attorney's Address
[ ] New Power of Attorney
[X] Patent Application
[X] Non-provisional [ ] Provisional
Incl. 145 pages, (137 pgs) Specification,
(1 pgs) Abstract, (7 pgs) Claims (45 # claims)
[ ] Design Patent Application
[X] Declaration(s) unexecuted
[X] Drawings 43 sheet(s) (FIGS. 1 - 63)
[ ] Formal [X] Informal
[ ] Verified Statement claiming small entity status
[ ] Assignment and Cover Sheet

[ ] Provisional Application Cover Sheet
[ ] Inf. Discl. Statement, PTO Form 1449
[ ] References Cited
[ ] Copy of Notice to File Missing Parts
[ ] Amendment/Response
[ ] Petition for Ext. of Time (x2)
[ ] Issue Fee Transmittal
[ ] Letter to Official Draftsperson
[ ] Notice of Appeal
[ ] Brief (x3)
[X] Check for $679.00 Check # 10748
[X] Transmittal Letter (x2)
[ ] Cert. of Mailing under 37 CFR 1.8(a)
[X] Express Mail Label No. EK005154057US

[ ] Other

jc825 U.S. PTO
09/992840
11/06/01

DATE MAILED 11/6/01

UNITED STATES 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.: 09-04

Paper No: __

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, P.C.
One Financial Center
Boston MA 02111

COPY MAILED
SEP 16 2004
OFFICE OF PETITIONS

In re Application of
Jeffers, et al. :
Application No. 09/992,840 : ON PETITION
Filed: 6 November, 2001 :
Attorney Docket No. 15966-557A (Cura 57A) :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 22 June, 2004.

The petition is **DISMISSED**.

NOTES:

(1) Any reply must include a renewed petition (and fee) must include a petition under 37 C.F.R. §1.47 and must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 C.F.R. §1.47";

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

(3) Petitioner may find that the scheduling of a Request for Status at six- (6) month intervals may prevent delays such as the one that occurred in this matter between 6 February, 2002, and 22 January, 2004. Moreover, the Office may require evidence of such request to demonstrate diligence consistent with the Pratt[1] requirements.

---

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

BACKGROUND

The record indicates:

- the application was filed on 6 November, 2001, without, *inter alia*, a fully executed oath or declaration;

- the Office mailed a Notice of Missing Parts (*inter alia*, oath/declaration) on 5 December, 2001 (the 5 December Notice), however, it appears that the 5 December Notice was not received by Petitioner, and ultimately the Office re-mailed the Notice on 22 January, 2002 (the 22 January Notice), with a response due absent extension of time on or before 22 March, 2004;

- on 22 June, 2004, Petitioner filed, *inter alia*, a request and fee for a three- (3-) month extension of time, an oath/declaration signed by the inventors (on behalf of themselves and) save for the non-responsive inventor Elma Fernandes (Ms. Fernandes), and the instant petition (statements by Ivor Elrifi (Reg. No. 39,529) and Kristin E. Konzak (Reg. No. 44,848) along with a statement by Nicole Carlucci and a copy of a transmittal letter dated 3 May, 2004.

- the referenced transmittal letter is explicit that Petitioner transmitted only the oath/declaration (with assignment), but not the entire application (specification: description abstract claims and drawings) to the non-signing inventor Ms. Fernandes.

ANALYSIS

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

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

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

§1.63 Oath or declaration.

(b) In addition to meeting the requirements of paragraph (a)of this section, the oath or declaration must also:

(1)Identify the application to which it is directed;

(2) State that the person making the oath or declaration has reviewed and understands the contents of the application, Including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

Thus, a copy of the entire application must be sent to the last known address of the non-signing inventor (or the estate representative) with a request that he/she sign the declaration for the patent application--and evidence of that transmittal submitted.

And a reasonable effort must be made to ascertain a current or last known address.

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

The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.[2]

CONCLUSION

The materials submitted thus far clearly evidence that Petitioner provided a copy of the entire application to the non-signing inventor. Moreover, there is no evidence that Petitioner had made a diligent effort to ascertain and inform the Office of the then-current and valid last known address of Ms. Fernandes

Petitioner should submit a copy of the transmittal letter and should state the address in the petition over Petitioner's signature and registration number.

---

[2] See: MPEP 409.03(b).

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

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

By mail: (Effective 1 May, 2003)[3]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(703) 872-9306
(Effective 28 September, 2004: (571-273-0025)
ATTN.: Office of Petitions

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

Telephone inquiries regarding this decision should be directed to the undersigned at 703-305-9199.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 08-05

Paper No: __

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, P.C.
One Financial Center
Boston MA 02111

COPY MAILED

AUG 1 1 2005

OFFICE OF PETITIONS

In re Application of
Jeffers, et al. :
Application No. 09/992,840 : ON PETITION
Filed: 6 November, 2001 :
Attorney Docket No. 15966-557A (Cura 57A) :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 1 July, 2005

The petition is **DISMISSED**.

NOTES:

(1) Any reply must include a renewed petition (and fee) must include a petition under 37 C.F.R. §1.47 and must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 C.F.R. §1.47";

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

BACKGROUND

The record indicates:

- the application was filed on 6 November 2001, without, *inter alia*, a fully executed oath or declaration;

- the Office mailed a Notice of Missing Parts (*inter alia*, oath/declaration) on 5 December, 2001 (th e5 December Notice), however, it appears that the 5 December Notice was not received by Petitioner, and ultimately the Office re-mailed the Notice on 22 January, 2004 (the 22 January Notice), with a response due absent extension of time on or before 22 March 2004;

- on 22 June, 2004, Petitioner filed, *inter alia*, a request and fee for a three- (3-) mnoth extension of time, an oath/declaration signed by the inventors (on behalf of themselves and) save for the non-responsive inventor Elma Fernandes (Ms. Fernandes), and the instant petition (statements by Ivor Elrifi (Reg. No 39,529) and Kristin E. Konzak (Reg. No. 44,848) along with a statement by Nicole Carlucci and a copy of a transmittal letter dated 3 May, 2004, however, the referenced transmittal document was explicit that Petitioner transmitted only the oath/declaration (with assignment), but not the entire application (specification: description abstract claims and drawings) to the non-signing inventor Ms. Fernandes, and so the petition was dismissed on 16 September, 2004, with a grant of two months to file a renewed petition;

- the instant petition was filed on 1 July, 2005–<u>more than nine months after dismissal of the original petition</u>–and Petitioner, apparently ignoring the discussion of the matter in the 16 September, 2004 decision–points to a transmittal letter of 17 September, 2004, that states expressly: "Enclosed, please find Assignment and Combined Declaration and Power of Attorney for Cura 57A."

It appears that once again the entire application was not transmitted.

<u>Moreover, it appears that the instant application went abandoned after midnight 16 November, 2004, for failure to reply to the 16 September, 2004, decision, absent extension of time, on or before 16 November, 2004.</u>

<u>ANALYSIS</u>

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

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

fee set forth in § 1.17(h), and the last known address of the nonsigning inventor. The nonsigning inventor may subsequently join in the application by filing an oath or declaration complying with §1.63.

* * *

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

§1.63 Oath or declaration.

(b) In addition to meeting the requirements of paragraph (a)of this section, the oath or declaration must also:

(1)Identify the application to which it is directed;

(2) State that the person making the oath or declaration has reviewed and understands the contents of the application, Including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

Thus, a copy of the entire application must be sent to the last known address of the non-signing inventor (or the estate representative) with a request that he/she sign the declaration for the patent application--and evidence of that transmittal submitted.

And a reasonable effort must be made to ascertain a current or last known address.

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

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

[1] See: MPEP 409.03(b).

CONCLUSION

The instant application appears to be abandoned for failure to reply to the 16 September, 2004, decision, absent extension of time, on or before 16 November, 2004.

The materials submitted thus far clearly evidence that Petitioner provided a copy of the entire application to the non-signing inventor. Moreover, there is no evidence that Petitioner had made a diligent effort to ascertain and inform the Office of the then-current and valid last known postal address of Ms. Fernandes.

Petitioner should submit a copy of the transmittal letter and should state the address in the petition over Petitioner's signature and registration number.

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

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

By mail: Commissioner for Patents[3]
P.O. Box 1450
Alexandria, VA 22313-1450

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

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

---

[2] 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 .)

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

Telephone inquiries regarding this decision should be directed to the undersigned at 703-305-9199.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

January 22, 2004

Ivor R. Elrifi
Mintz Levin Cohn Ferris
Glovsky & Popeo
One Financial Center
Boston, MA 02111 .

In re application of:
Jeffers, etal DECISION ON PETITION
Serial No: 09/992,840
Filed: November 6, 2001
For: TREATMENT OF INFLAMMATORY BOWEL DISEASE
USING GROWTH FACTORS

This is a decision on the petition received by fax on September 23, 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 Nonprovisional Application on December 5, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 6, 2002

On September 23, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgement that the attorney never received the Notice to File Missing Parts of Nonprovisional Application mailed on December 5, 2001.

The petition is hereby GRANTED.

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

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

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

Doshie E. Day
Program Management Assistant
Office initial Patent Examination

2 Enclosures

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJG/R.. 09-04

Paper No: __

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY, AND POPEO, P.C.
One Financial Center
Boston MA 02111

COPY MAILED

SEP 16 2004

OFFICE OF PETITIONS

In re Application of
Jeffers, et al.
Application No. 09/992,840
Filed: 6 November, 2001
Attorney Docket No. 15966-557A (Cura 57A)

ON PETITION

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 22 June, 2004.

The petition is **DISMISSED**.

NOTES:

(1) Any reply must include a renewed petition (and fee) must include a petition under 37 C.F.R. §1.47 and must be submitted within two (2) months from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Petition under 37 C.F.R. §1.47";

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

(3) Petitioner may find that the scheduling of a Request for Status at six- (6) month intervals may prevent delays such as the one that occurred in this matter between 6 February, 2002, and 22 January, 2004. Moreover, the Office may require evidence of such request to demonstrate diligence consistent with the Pratt[1] requirements.

---

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

BACKGROUND

The record indicates:

- the application was filed on 6 November, 2001, without, *inter alia*, a fully executed oath or declaration;

- the Office mailed a Notice of Missing Parts (*inter alia*, oath/declaration) on 5 December, 2001 (the 5 December Notice), however, it appears that the 5 December Notice was not received by Petitioner, and ultimately the Office re-mailed the Notice on 22 January, 2002 (the 22 January Notice), with a response due absent extension of time on or before 22 March, 2004;

- on 22 June, 2004, Petitioner filed, *inter alia*, a request and fee for a three- (3-) month extension of time, an oath/declaration signed by the inventors (on behalf of themselves and) save for the non-responsive inventor Elma Fernandes (Ms. Fernandes), and the instant petition (statements by Ivor Elrifi (Reg. No. 39,529) and Kristin E. Konzak (Reg. No. 44,848) along with a statement by Nicole Carlucci and a copy of a transmittal letter dated 3 May, 2004.

- the referenced transmittal letter is explicit that Petitioner transmitted only the oath/declaration (with assignment), but not the entire application (specification: description abstract claims and drawings) to the non-signing inventor Ms. Fernandes.

ANALYSIS

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

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

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

§1.63 Oath or declaration.

(b) In addition to meeting the requirements of paragraph (a)of this section, the oath or declaration must also:

(1)Identify the application to which it is directed;

(2) State that the person making the oath or declaration has reviewed and understands the contents of the application, Including the claims, as amended by any amendment specifically referred to in the oath or declaration; and

(3) State that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in § 1.56.

Thus, a copy of the entire application must be sent to the last known address of the non-signing inventor (or the estate representative) with a request that he/she sign the declaration for the patent application--and evidence of that transmittal submitted.

And a reasonable effort must be made to ascertain a current or last known address.

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

The declaration must set forth the inventor's residence, citizenship and post office address. An oath or declaration in compliance with 37 C.F.R. §§1.63 and 1.64 signed by the Rule 1.47 applicant is required.[2]

CONCLUSION

The materials submitted thus far clearly evidence that Petitioner provided a copy of the entire application to the non-signing inventor. Moreover, there is no evidence that Petitioner had made a diligent effort to ascertain and inform the Office of the then-current and valid last known address of Ms. Fernandes

Petitioner should submit a copy of the transmittal letter and should state the address in the petition over Petitioner's signature and registration number.

---

[2] See: MPEP 409.03(b).

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

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

By mail: (Effective 1 May, 2003)[3]
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: IFW Formal Filings
(703) 872-9306
(Effective 28 September, 2004: (571-273-0025)
ATTN.: Office of Petitions

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

Telephone inquiries regarding this decision should be directed to the undersigned at 703-305-9199.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 07-05

Paper No: 12

JENELL LAWSON
CURAGEN CORPORATION
555 LONG WHARF DRIVE
NEW HAVEN CT 06551

COPY MAILED
JUL 0 5 2005
OFFICE OF PETITIONS

In re Application of
Jeffers, et al. :
Application No. 09/992,840 : ON PETITION
Filed: 6 November, 2001 :
Attorney Docket No. 15966-557A (Cura 57A) :

This is a decision on the petition under ¶(a) of 37 C.F.R. §1.47, filed on 8 October, 2004.

The Office regrets the delay in addressing this matter

The petition is **GRANTED**.

BACKGROUND

The record indicates:

- the application was filed on 6 November 2001, without, *inter alia*, a fully executed oath or declaration;

- the Office mailed a Notice of Missing Parts (*inter alia*, oath/declaration) on 5 December, 2001 (th e5 December Notice), however, it appears that the 5 December Notice was not received by Petitioner, and ultimately the Office re-mailed the Notice on 22 January, 2004 (the 22 January Notice), with a response due absent extension of time on or before 22 March 2004;

- on 22 June, 2004, Petitioner filed, *inter alia*, a request and fee for a three- (3-) mnoth extension of time, an oath/declaration signed by the inventors (on behalf of themselves and) save for the non-responsive inventor Elma Fernandes (Ms. Fernandes), and the instant petition (statements by Ivor Elrifi (Reg. No 39,529) and Kristin E. Konzak (Reg. No. 44,848) along with a statement by Nicole Carlucci and a copy of a transmittal letter, which is explicit that Petitioner transmitted only the oath/declaration (with assignment), and the petition was dismissed on 16 September, 2004, for failure to transmit the entire application (specification: description abstract claims and drawings) to the non-signing inventor Ms. Fernandes;

- the instant petition cures that deficiency and sets forth a current address for the non-signing inventor Ms. Fernandes.

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

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

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

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

This file is being forwarded to OIPE for processing as necessary to reflect the instant decision before being released for examination in due course.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JJGJR.: 07-05

Paper No: 13

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JUL 0 5 2005

OFFICE OF PETITIONS

ELMA FERNANDES
P.O. BOX 8120
BRIDGEWATER, NJ 08807

In re Application of
Jeffers, et al. :
Application No. 09/992,840 : COMMUNICATION
Filed: 6 November, 2001 :
Attorney Docket No. 15966-557A (Cura 57A) :

Dear Elma Fernandes:

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

---

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

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

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

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

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

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

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 C.F.R. §1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. §1.63.

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

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

Telephone inquiries concerning this letter may be directed to the undersigned at (571) 272-3214.

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

Counsel of Record:
JENELL LAWSON
CURAGEN CORPORATION
555 LONG WHARF DRIVE
NEW HAVEN CT 06551

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/19/07

TO SPE OF : ART UNIT 1756 Mark Huff

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/992941 Patent No.: 6847453

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: _____

Mark F. Huff — SPE

1756 — 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

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MAY 12 2005

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

RUTAN & TUCKER, LLP
611 ANTON BLVD., SUITE 1400
COSTA MESA, CA 92628

In re Application of	:	
Wayne C Boncyk et al.	:	
Application No. 09/992,942	:	DECISION ON PETITION
Filed: November 5, 2001	:	TO MAKE SPECIAL
For: IMAGE CAPTURE AND IDENTIFICATION	:	
SYSTEM AND PROCESS	:	

This is a decision on the petition filed April 13, 2005 under 37 CFR §1.102(d) to make the application special.

A grantable petition under 37 CFR §1.102(d) and MPEP §708.02, section II (Infringement), must be accompanied by the required fee and a statement alleging:

(1) that there is an infringing device or product actually on the market or method in use;
(2) that a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and
(3) that he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art. Further, Applicant must provide a copy of each of the references deemed most closely related to the subject matter encompassed by the claims if the references are not already of record.

The petitioner meets all the above-listed requirements. Accordingly, the petition is **GRANTED**.

The application will retain its special status throughout its entire prosecution, including any appeal to the Board of Patent Appeals and Interferences, subject only to diligent prosecution by the applicant.

The application is being forwarded to the examiner for expedited prosecution.

Doris To
Special Program Examiner
Technology Center 2600
Communications

CC :
Rutan & Tucker,LLP
P.O. Box 1950
611 Anton BLVD., 14th Floor
Costa Mesa, CA 92628-1950

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Samuel H. Dworetsky
AT&T CORP.
P.O. Box 4110
Middletow, NJ 07748-4110

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SEP 20 2006

OFFICE OF PETITIONS

In re Application of :
Cohen et al. :
Application No. 09/992,988 : ON PETITION
Filed: November 19, 2001 :
Atty Docket No.: :
2000-0325 :

This is a decision on the Petition to Correct Filing Date, filed June 19, 2006, requesting the above-identified application be accorded the filing date of November 19, 2001, instead of the presently accorded filing date of November 13, 2001. The petition is properly treated under 37 CFR 1.10.

This Petition is hereby **granted**.

Petitioner alleges that the application was deposited in Express Mail service on November 19, 2001. In support of this assertion, the petition is accompanied by a copy of Express Mail label No. EL809217545US. A review of the Express Mail label, No. EL809217545US, reveals that the "Date In" indicated on the Express Mail label is November 19, 2001. The same Express Mail label number was placed on the Provisional Application for Patent Cover Sheet filed with the application.

The application file is being referred to the Office of Initial Patent Examination for correction of the filing date to November 19, 2001 and for the mailing of a Corrected Filing Receipt.

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

Derek L. Woods
Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

JOAN M. MCGILLYCUDDY
AKZO NOBEL INC.
7 LIVINGSTONE AVENUE
DOBBS FERRY, NY 10522-3408

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SEP 26 2006

OFFICE OF PETITIONS

In re Application of :
Arthur Jozef Gerardus Van Rooyen :
Application No. 09/992,995 : ON PETITION
Filed: November 6, 2001 :
Attorney Docket No.: ACO2837US :

This is a decision on the petition, filed September 20, 2006, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 13, 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 1714 for further processing of the request for continued examination under 37 CFR 1.114.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

AKZO NOBEL INC.
INTELLECTUAL PROPERTY DEPARTMENT
120 WHITE PLAINS ROAD 3RD FLOOR
TARRYTOWN NY 10591

COPY MAILED

DEC 13 2006

OFFICE OF PETITIONS

ON PETITION

In re Application of	:
Van Rooyen et al	:
Application No. 09/992,995	:
Filed: November 6, 2001	:
Attorney Docket No. ACO2837US	:

This is a decision on the petition filed December 7, 2006, which is being treated as a petition under 37 CFR 1.313(c)(2), requesting withdrawal of the above-identified application from issue.

The petition is **dismissed** as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance has not yet been mailed. While, the petition states that the issue fee in this application was paid on September 13, 2006, the issue fee was in reply to the Notice of Allowance mailed on August 7, 2006. A petition to withdraw from issue was filed on September 20, 2006 and granted on September 26, 2006. Therefore, the petition submitted on December 7, 2006 is premature since a new Notice of Allowance has not been mailed.

Since the petition and RCE is permature the fees will be refunded to petitioner's deposit account no. 01-1350 as authorized. It is noted that the Office incorrectly charged the fee for a one month extension of time ($120) instead of the petition fee of $130.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3208.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 12

MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

COPY MAILED

MAY 2 8 2002

OFFICE OF PETITIONS

In re Application of
Neaux
Application No. 09/993,026
Filed: November 14, 2001
Attorney Docket No.: 9320.138US01
For: ROOF-RACK BAR FOR AUTOMOBILE VEHICLES INTENDED TO BE MOUNTED ON NON-PARALLEL SIDE RAILS

ON PETITION

This is a decision on the petition, filed February 8, 2002, under 37 CFR 1.181 in response to the Notice to File Missing Parts of Nonprovisional Application ("Notice") mailed December 10, 2001.

The application was filed November 14, 2001. On December 10, 2001, the Office of Initial Patent Examination mailed a Notice stating that the application had been accorded a filing date of November 14, 2001, but indicating, among other things, that page one of the specification appeared to have been omitted.

The Notice permits applicant to either: (1) establish prior receipt in the PTO of page 18 of the specification or (2) submit the omitted page of specification and accept the date of such submission as the application filing date. An assertion that the missing page of specification was in fact deposited in the PTO with the application papers must made by way of petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted item in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted item with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such item and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioner contends that the application was complete upon filing and states that page one was present in the form of the abstract page, but that the abstract page was unnumbered.

A review of the substitute specification filed in response to the Notice confirms that page one is present in the form of the abstract page and that this page is unnumbered. Since it is obvious from the petition that no pages were actually missing on November 14, 2001, and that applicant does not intend to file any additional pages of specification, the application will be processed using the substitute specification submitted February 8, 2002.

However, the Notice mailed December 10, 2001, was correct in advising applicant that page one of the specification appeared to have been omitted. Therefore, the "Notice" was properly mailed and will not be withdrawn.

The petition is dismissed.

The petition fee will not be refunded, since the petition was not necessary to correct any PTO error.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of November 14, 2001, using the substitute specification submitted February 8, 2002.

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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MAR 2 9 2007

OFFICE OF PETITIONS

In re Application of :
JACOBS, et al :
Application No. 09/993,168 :
Filed: November 6, 2001 :
Attorney Docket No. CDS-256 :

DECISION ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 8, 2006, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed May 19, 2006, which set a shortened statutory period for reply of three (3) months. A one (1) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the above-identified application became abandoned on November 20, 2006.

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, Request for Continued Examination, and the $790 filing fee; (2) the petition fee of $1500; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office Action of May 19, 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 knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until

the filing of a grantable petition pursuant of 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to Jean F. Duverne at (571) 272-6051 or in his absence, the undersigned at (571) 272-7099 .

The application file is being referred to Technology Center AU 1655 for appropriate action on the concurrently filed amendment.

David A. Bucci
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 9

STEVEN J. FUNK
SPRINT CORPORATION
8140 WARD PARKWAY
KANSAS CITY, MO 64114

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JUN 01 2004

OFFICE OF PETITIONS

In re Application of	:
Manish Mangal et al	:
Application No. 09/993,213	: DECISION ON PETITION
Filed: November 16, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 1705	:

This is a decision on the petition, filed May 13, 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 Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on September 19, 2002. A review of the file record discloses that a Notice to Rescind was received in the USPTO on August 26, 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 22 (July 1, 2003), available at http://www.uspto.gov/web/patents/patog/week26/.

In the instant application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country. Therefore, since receipt in the USPTO

of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

Since this application is not in fact abandoned, for the reason stated above, the petition fee of $1,300 will be refunded to petitioner's deposit account in due course.

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

This application is being forwarded to Technology Center AU 2661 for examination in due course.

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

Frances Hicks

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

cc:

McDonnell Boehnen
Hulbert & Berghoff
300 South Wacker Drive
Chicago, IL 60606

#10

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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AUG - 8 2002

LICENSING & REVIEW

Hamilton, Brook, smith & Reynolds, PC
530 Virginia Road
P. O. Box 9133
Concord, MA 01742-9133

In re Application of:
Katherine M. Call et al:
For Serial No. 09/993,215

DECISION ON
REQUEST FOR
RECONSIDERATION

Filed: November 12, 2001
For: LOCALIZATION AND CHARACTERIZATION OF THE WILM'S TUMOR GENE

This is a decision on the REQUEST FOR RECONSIDERATION filed July 24, 2002, responding to the communication (FORM PTOL-456) mailed July 1, 2002.

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 "^{125}I " as disclosed in at least page 18 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.

Applicant is reminded that a response is due within forty-five days of the mailing date of the communication (FORM PTOL-456). The communication having been mailed July 1, 2002.

Joanne P. Hodge
Supervisory Legal Instruments Examiner
Licensing and Review
Patent Technology Center 3600

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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#13

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OCT 22 2002

LICENSING & REVIEW

HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

IN RE:	Call, et al	
SERIAL NO.	09/993,215	:DECISION ON REQUEST FOR
FILED:	November 12, 2001	:RECONSIDERATION FOR A
DOCKET #	0050.1312-014:	STATEMENT UNDER 42USC2182

FOR: LOCALIZATION AND CHARACTERIZATION OF THE WILM'S TUMOR GENE

This is in response to the petition filed on October 16, 2002 for reconsideration of a statement pursuant to 42 U.S.C 2182.

The petition is Granted.

The Commissioner letter mailed on September 25, 2002 is hereby vacated.

Any question concerning this decision should be referred to Michael Carone at 703 306-4198.

Michael J. Carone
Acting Directory, Licensing and Review
Supervisory Patent Examiner Art Unit 3641

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 9

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD CT 06905

COPY MAILED

JUL 09 2002

OFFICE OF PETITIONS

In re Application of
Mueller, et al.
Application No. 09/993,228
Date Deposited: November 14, 2001
Attorney Docket No. 00-106

REQUEST FOR INFORMATION

This is a Request for Information concerning the "Petition to Request Acceptance of Filing Date", filed March 7, 2002 (Certificate of Mailing dated March 4, 2002).

On petition, applicant has supplied a substitute specification with reformatted margins (as instructed in the Notice of Incomplete Nonprovisional Application mailed January 28, 2002). However, to aid in consideration of the petition, petitioner is requested to submit a copy of the specification as originally submitted on November 14, 2001 (described on petitioner's postcard receipt as "Patent Application - 99pp"). Applicant should take care to mark the specification "COPY" so that the specification is not inadvertently initialized as a new application by the Initial Patent Examination Division.

Applicant should address this copy as follows:

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

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

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

Petitioner has ONE MONTH from the mail date of this Request for Information to reply. Thereafter, the petition will be considered on the basis of the evidence currently before the Office.

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov
DW 10-02

Paper No. 11

WALKER DIGITAL
FIVE HIGH RIDGE PARK
STAMFORD CT 06905

COPY MAILED

OCT 1 5 2002

OFFICE OF PETITIONS

In re Application of :
Mueller et al. :
Application No. 09/993,228 : DECISION GRANTING PETITION
Filed: 14 November, 2001 :
Atty Docket No. 00-106 :

This is a decision on the petition filed on 7 March, 2002, and supplemented on 19 July, 2002, which is treated as a petition under 37 CFR 1.53 requesting that the above-identified application be accorded a filing date of 14 November, 2001, with a complete specification, including at least one claim, as a part of the original disclosure.

On 14 November, 2001, the application was filed.

On 28 January, 2002, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that the application had not been accorded a filing date because the specification did not include at least one claim. Additionally, the notice required, *inter alia*, a substitute specification in compliance with 37 CFR 1.52.

In response, on 7 March, 2002, the present petition, accompanied by a $130.00 petition fee. Petitioner argues that a complete specification, including seven (7) claims, was filed with the other application papers on 14 November, 2001, and that the pages containing the claims were misplaced in the U.S. Patent and Trademark Office (Office). A substitute specification was also filed with the petition. A Request for Information was mailed on 9 July, 2002, however, because petitioners had not included a copy of the specification as originally filed. Petitioners were given one (1) month to submit a copy of the specification as originally filed on 14 November, 2001.

In response, on 19 July, 2001, a copy of the specification as originally filed was submitted. In support of the petition, a copy of petitioner's postcard receipt was supplied on 7 March, 2002. The postcard receipt, which shows an "Office-date" stamp of 14 November, 2001, and containing the above-identified application number, identifies the application by first named inventor's last name, attorney docket number, and invention title, and acknowledges

receipt of, *inter alia*, Patent Application (99 pp.). Petitioner requests that the application, including 99 pages of specification, including claims, be accorded a filing date of 14 November, 2001.

Upon review of the record, 46 pages of specification deposited on 14 November, 2001, have been located among the application papers. However, the evidence is convincing that the application papers deposited on 14 November, 2001, included 99 pages of specification, including seven (7) claims, of which 53 pages were subsequently misplaced in the USPTO. Therefore, the application, including 99 pages of specification, including seven (7) claims, was complete on filing and entitled to a filing date of 14 November, 2001.

In view of the above, the petition is granted. The application will be processed with the 46 pages of specification filed on 14 November, 2001, and the copy of the additional 53 pages of specification, including the claims and abstract, supplied on 19 July, 2002. The copy of the originally filed 46 pages of specification supplied on 19 July, 2002, will not be used for processing or examination, but will be retained in the application file. The petition fee is unnecessary and will be credited to counsel's deposit account, No. 50-0271.

The "Notice" mailed on 28 January, 2002, was sent in error and is hereby withdrawn.

Receipt is acknowledged of the substitute specification filed on 7 March, 2002. The substitute drawings is not part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being returned to Initial Patent Examination Division for processing with a filing date of 14 November, 2001, using the application papers filed on that date, and the 53 pages of specification, including claims and abstract, supplied on 19 July, 2002, and for an indication on the bib-data sheet that seven (7) claims were present on filing.

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

DWood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

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

032005

LERNER AND GREENBERG, PA
P.O. BOX 2480
HOLLYWOOD, FL 33022-2480

APR 15 2005

In re Application of:
Hagen et al.
Serial No.: 09/993,266
Filed: November 19, 2001
Attorney Docket No.: **MAS-FIN-141**

DECISION ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition filed on December 10, 2004. The petition is being treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above identified application.

The petition is **GRANTED**.

The application was held abandoned for failure to timely file a response to the Final Office action mailed on March 11, 2003. A Notice of Abandonment was mailed on November 29, 2004.

Petitioner asserts that a Notice of Appeal was timely filed on July 15, 2003, bearing a certificate of mailing of July 11, 2003, along with a petition for a one-month extension of time, and subsequently that a Brief on Appeal was timely filed on September 22, 2003, bearing a certificate of mailing of September 15, 2003. To support this assertion, petitioner has submitted copies of the postcard receipts acknowledging receipt in the Office of the Notice of Appeal and the Brief on Appeal.

M.P.E.P. § 503 states, "A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, it is concluded that the response was timely received in the Office. Furthermore, a review of the application file record reveals that the above-identified [responses] papers have now been received and matched with the application.

A proper reply under 37 C.F.R. § 1.113 to a final rejection consists of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 C.F.R. § 1.114.

Since the Notice of Appeal (with appeal fee) was timely filed on July 15, 2003, the petition is granted. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn. The application is restored to pending status.

The examiner will review the Appeal Brief and take appropriate action.

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

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

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Alexandria, VA 22313-1450
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Mailed: 12/29/04

spg
Paper Number _____

In re Application of Clive Randall et al.
Serial No.: 09/993,284
Filed: November 16, 2001

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

For: COFIRED MULTILAYERED PIEZOELECTRIC CERAMIC MATERIALS WITH BASE METAL ELECTRODES

This is a decision on the AMENDMENT AND PETITION TO CORRECT AND/OR ADD TO ORIGINAL NAMED INVENTOR(S) UNDER 37 C.F.R. § 1.48(a) filed November 7, 2003 to correct inventorship under 37 CFR 1.48(a) by adding the name of Alfons Kelnberger to the list of inventors of the instant application.

The petition is **DENIED**.

A petition to correct inventorship as provided by 37 C.F.R. § 1.48(a) requires (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee. This petition lacks item (2) - a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part.

Any questions regarding this decision should be directed to the undersigned at (571) 272-1189.

Steven P. Griffin
Supervisory Patent Examiner
Art Unit 1731
Technology Center 1700

Paul D. Greeley, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
10th Floor
One Landmark Square
Stamford CT 06901-2682

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.
09/993,284	11/16/2001	Clive A. Randall	823.0106USU	5378

7590 09/16/2005

Paul D. Greeley, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
10th Floor
One Landmark Square
Stamford, CT 06901-2682

EXAMINER
FIORILLA, CHRISTOPHER A

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 09/16/2005

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

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

Mailed:

CAF
Paper No.

In re Application of Randall et al.
Serial No.: 09/993,284
Filed: November 16, 2001

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

Title: COFIRED MULTILAYERED PIEZOELECTRIC CERAMIC MATERIALS WITH BASE METAL ELECTRODES

This is a decision on the PETITION TO CORRECT INVENTORSHIP IN A NON-PROVISIONAL PATENT APPLICATION filed February 28, 2005 to correct inventorship under 37 CFR 1.48(a) by adding the name of Alfons Kelnberger to the list of inventors of the instant application.

It is noted that the applicant has met the requirements of 37 C.F.R. § 1.48(a) by (1) submitting a request to correct the inventorship that sets forth the desired inventorship change; (2) providing a statement from each person being added as an inventor that the error in inventorship occurred without deceptive intention on his or her part; (3) providing a declaration of the actual inventors as required by 37 C.F.R. § 1.63; (4) providing the processing fee set forth in 1.17(i); and, (5) providing the written consent of the assignee.

The request is **GRANTED**.

The application file is being forwarded to the appropriate section of the Patent and Trademark Office for correction of the record.

Christopher A. Fiorilla
Supervisory Patent Examiner
Art Unit 1734
Technology Center 1700

Paul D. Greeley, Esq.
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
10th Floor
One Landmark Square
Stamford CT 06901-2682

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 16

MCHALE & SLAVIN, P.A.
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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SEP 19 2005

OFFICE OF PETITIONS

In re Application of

Jackowski, et al.

Application No. 09/993,289

Filed: November 23, 2001

Attorney Docket No. 2132.092

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), June 30, 2005, to revive the above-identified application.

The petition is **dismissed**.

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

This application became abandoned for failure to respond in a timely manner to the final Office action mailed October 21, 2003. The notice set a shortened 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 January 22, 2004. A Notice of Abandonment was mailed on June 2, 2004.

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

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

(2) the petition fee as set forth in 37 CFR 1.17(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 (2) above.

An attempt was made to charge deposit account 15-1803 for the petition fee and fee for the Request for Continued Examination. The undersigned was advised that deposit account 15-1803 did not have sufficient funds to cover the total amount due. Any renewed petition must be accompanied by the petition fee of $750.00 and the Request for Continued Examination fee of $395.00.

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

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Paper No. 17

McHale & Slavin P.A.
2855 PGA Blvd.
Palm Beach Gardens, FL 33410

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SEP 29 2005

OFFICE OF PETITIONS

In re Application of

Jackowski, et al.

Application No. 09/993,289

Filed: November 23, 2001

Attorney Docket No. 2132.092

: DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed June 30, 2005, to revive the above-identified application.

The decision of September 19, 2005, is **vacated**.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to file a timely response to the final Office action mailed October 21, 2003. The final Office action set a shortened 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 January 22, 2004. A Notice of Abandonment was mailed on June 2, 2004.

The Request for Continued Examination and amendment filed June 30, 2005, are noted and made of record.

Deposit account 50-1803 will be charged $750.00 for the petition fee and $395.00 for the Request for Continued Examination.

The application file is being forwarded to Technology Center 1600, GAU 1641 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

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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STEVEN N. HIRD
SWANSON & BRATSCHUN
1745 SHEA CENTER DRIVE, SUITE 330
HIGHLANDS RANCH, CO 80129

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FEB 04 2004
OFFICE OF PETITIONS

In re Application of :
Larry Gold et al :
Application No. 09/993,294 :
Filed: November 21, 2001 :
Attorney Docket No. SML.06

NOTICE

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

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

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

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

This file is being forwarded to Technology Center AU 1634.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 9

JOHN J. BRUCKNER
FULBRIGHT & JAWORSKI
600 CONGRESS AVENUE
SUITE 2400
AUSTIN, TX 78701

COPY MAILED

JUL 30 2002

OFFICE OF PETITIONS

In re Application of	:	
Kishan Shenoi et al	:	
Application No. 09/993,302	:	DECISION GRANTING
Filed: November 14, 2001	:	PETITION
Attorney Docket No. SYMM1220-1	:	

This is a decision on the petition under 37 CFR 1.10(c) filed April 16, 2002, requesting that the above-identified application be accorded a filing date of November 14, 2001, rather than the presently accorded filing date of November 16, 2001.

Applicants allege that the application was deposited in "Express Mail" service with the U.S. Postal Service on November 14, 2001. In support, applicants provided a copy of the Express Mail label, receipt No. EL780052604US, showing a "date-in" of November 14, 2001. The same Express Mail receipt number appears on the original transmittal letter found in application file. Applicants request that the application be accorded a filing date of November 14, 2001.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label, MPEP 513. That is the date that verifies that the package was actually mailed. That is the date that verifies that the package was actually mailed. The evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on November 14, 2001.

The petition is granted.

No petition fee is required and none has been charged.

Receipt is acknowledged of the statutory basic filing fee, the declaration, petition for a two month extension of time, change of address, and the power of attorney filed April 16, 2002, using a Certificate of Mailing dated April 8, 2002, in response to the Notice mailed December 6, 2001.

The application is being returned to Initial Patent Examination Division for correction of the filing date to November 14, 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

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CAMPBELL & FLORES LLP
4370 LA JOLLA VILLAGE DRIVE
7TH FLOOR
SAN DIEGO CA 92122

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OCT 3 0 2003

OFFICE OF PETITIONS

Applicant: Hood et.
Appl. No.: 09/993,312
Filing Date: November 13, 2001
Title: MULTIPARAMETER INTEGRATION METHODS FOR THE ANALYSIS OF BIOLOGICAL NETWORKS
Attorney Docket No.: 66661-036 (P-IS 4988)
Pub. No.: US 2003/0130798 A1
Pub. Date: July 10, 2003

This is in response to the request for correction of patent application publication under 37 CFR 1.221(b), which was filed on August 11, 2003.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication incorrectly lists Hood as the first inventor on the front page of the patent application publication and that on page 22, Example II in the header "Global Changes" is misspelled as "Global Chances".

37 CFR 1.221(b) is applicable "only when the Office makes a material mistake which is apparent from Office records." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.[1] The instant request does not identify a material mistake in the publication made by the Office:

With respect to incorrectly listing the wrong inventor first on the front page of the patent application publication, the Office did not make a mistake in the publication. Although applicant contends that the Office published the names of the inventors in the wrong order, the declaration filed on May 6, 2002, listed the inventors as Leroy E. Hood and Trey E. Ideker, thus the patent application publication listed the inventors in the correct order as provided by 37 CFR 1.215(a). To change the order of the inventors in the Office system and in any patent that may issue, applicant should file a petition under 37 CFR 1.182 to change the order of the inventors. See MPEP 605.04(f).

The error in the header for Example II on page 22, wherein "Global Changes" is misspelled as "Global Chances" is an Office error, but it is a minor typographical error which is understandable

[1] Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239 Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

as such from reading the sentence and/or paragraph in which the term is used, as terms are not read in a vacuum. The mistake does not affect the public's ability to appreciate the technical disclosure of the patent application publication, or determine the scope of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent, as none of the claims rely on this language.

The applicant is advised that a "request for republication of an application previously published" may be filed under 37 CFR 1.221(a). Such a request for republication "must include a copy of the application in compliance with the Office's electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i)." If the request for republication does not comply with the electronic filing system requirements, the republication will not take place and the publication fee set forth in § 1.18(d) will be refunded. The processing fee will be retained.

Any request for republication under 37 CFR 1.221(b), should be submitted via the EFS system and questions or request for reconsideration of this decision, should be addressed as follows:

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

By facsimile: 703-305-8568

The application is being forwarded to Technology Center 1631 to await further examination in due course.

Inquiries relating to this matter may be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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RAYMOND R. MOSER JR.,
MOSER IP LAW GROUP
1040 BROAD STREET
2ND FLOOR
SHREWSBURY NJ 07702

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AUG 1 2 2005

OFFICE OF PETITIONS

In re Application of	:	
Charles Abraham	:	
Application No. 09/993,335	:	ON PETITION
Filed: November 6, 2001	:	
Attorney Docket No. GLBL/022	:	

This is a decision on the petition, filed August 11, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee. This is also a decision on the petition under 37 CFR 1.78(a)(3), filed August 11, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to prior-filed nonprovisional Application No. 09/715,860, filed November 17, 2000.

The petition is **GRANTED.**

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

Petitioner is advised that the issue fee paid on August 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]

As to the petition under 37 CFR 1.78(a)(3):

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

---

[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).

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.

The instant petition does not comply with item (1) above.

A reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[2] deleting the incorporation by reference statement for Application No. 09/715,860, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

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

---

[2] *Note* 37 CFR 1.121

By hand: Customer Window located at:

Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

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

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

RAYMOND R. MOSER JR.,
MOSER IP LAW GROUP
1040 BROAD STREET
2ND FLOOR
SHREWSBURY NJ 07702

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JAN 19 2006

OFFICE OF PETITIONS

In re Application of	:
Charles Abraham	:
Application No. 09/993,335	: DECISION ON PETITION
Filed: November 6, 2001	: UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. GLBL/022	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed August 25, 2005, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of priority to the prior-filed nonprovisional applications set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

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

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

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional applications is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The petition complies with the requirements for a grantable petition under 37 CFR 1.78(a)(3) in that (1) a reference to the above-noted, prior-filed nonprovisional applications has been included in an amendment to the first sentence of the specification following the title, as provided by 37 CFR 1.78(a)(2)(iii); (2) the surcharge fee required by 37 CFR 1.17(t) has been submitted; and (3) the petition contains a proper statement of unintentional delay. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the above-noted, prior-filed nonprovisional applications satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

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

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

Any inquiries concerning this decision may be directed to 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 matter is being forwarded to Technology Center Art Unit 3662 for appropriate action on the amendment filed August 25, 2005, including consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional applications.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions

ATTACHMENT: Corrected Filing Receipt

UNITED STATES PATENT AND TRADEMARK OFFICE

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

STEPHEN D. O'CONNOR
1892 GALBRATH ROAD
PASADENA CA 91104

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APR 2 2 2003

OFFICE OF PETITIONS

In re Application of
Blackburn, et al.
Application No. 09/993,342
Filed: November 5, 2001
Attorney Docket No. A-68718-4/RFT/RMS/RMK
For: DEVICES AND METHODS FOR BIOCHIP MULTIPLEXING

LETTER

Dear Mr. O'Connor:

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
Senior Petitions Attorney
Office of Petitions

ATTORNEY OF RECORD: Robin M. Silva
Dorsey & Whitney, LLP
Suite 3400
Four Embarcadero Center
San Francisco CA 94111-4187

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

Robin M. Silva
Dorsey & Whitney, LLP
Suite 3400
Four Embarcadero Center
San Francisco CA 94111-4187

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APR 2 2 2003

OFFICE OF PETITIONS

In re Application of
Blackburn, et al.
Application No. 09/993,342
Filed: November 5, 2001
Attorney Docket No. A-68718-4/RFT/RMS/RMK
For: DEVICES AND METHODS FOR BIOCHIP MULTIPLEXING

ON PETITION

This decision is in response to (1) the petition under 37 CFR 1.47(a), filed July 12, 2002 (certificate of mailing date July 8, 2002) and (2) a "Request for Corrected Filing Receipt," filed July 12, 2002 (certificate of mailing date July 8, 2002). The "Request for Corrected Filing Receipt" will be treated as a petition under 37 CFR 1.181 requesting alteration of the Office of Initial Patent Examination's decision regarding priority data.

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

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

Petitioner has shown that the non-signing inventor, Stephen D. O'Conner has refused to join in the filing of the above-identified application after having been presented with the opportunity to view the application papers. Specifically, petitioners have submitted a letter signed by Stephen D. O'Conner that states that he does not wish to review the application and will not sign the declaration. Petitioner has submitted a declaration in substantial compliance with 37 CFR 1.63.

It is noted that the information/name of Inventors Olsen and Pietri contain non-initialed and non-dated changes. 37 CFR 1.52(c) states that "[a]ny interlineation, erasure, cancellation or **other alteration** of the application papers filed should be made on or before the signing of the accompanying oath or declaration pursuant to 1.63...." (emphasis added). declaration. The Office will not consider whether noninitialed and or nondated alterations were made before or after signing of the oath or declaration but will require a new oath or declaration. See MPEP 605.04(a). For this reason, a newly executed supplemental declaration by Inventors Olsen and Pietri, listing all 9 inventors and the proper information for all parties is required. **Petitioners should submit a supplemental declaration within two (2) months of the mail date of this decision.**

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 nonsigning inventor at the address given in the petition. Notice of the filing of this application will

also be published in the Official Gazette.

Petitioner filed a "Request for Corrected Filing Receipt," on July 12, 2002 (certificate of mailing date July 8, 2002), requesting that the above-identified application's priority data be altered.

Petitioners argue that the filing date of the provisional application from which the above-identified application claims priority is incorrect. Petitioner states that the "Priority Data as Claimed by Applicant" portion of the receipt should read, "THIS APPLN CLAIMS BENEFIT OF 60/145,840 11/03/2000-." Petitioner contends that the filing date is incorrect.

This assertion is wrong. Provisional application no. 60/145,840 has a filing date of July 27, 1999. More salient to this analysis, provisional application no. 60/145,840 is a completely unrelated application to the above-identified application.

A review of the specification of the above-identified application reveals that applicant claimed benefit of the same unrelated provisional application (60/145,840).

Applicant should have claimed benefit of provisional application no. 60/245,840. Provisional application no. 60/245,840 has a filing date of November 3, 2000. Provisional application no. 60/245,840 is the provisional application titled, "DEVICES AND METHODS FOR BIOCHIP MULTIPLEXING."

The petition under 37 CFR 1.181 to alter the above-identified application's priority data is **DISMISSED**.

This application was filed after November 29, 2000 and is subject to the rule that priority claims for the benefit of a prior filed provisional application must be submitted within the later of 4 months from the actual filing date of the nonprovisional application or 16 months from the filing date of the prior application for which a claim for priority is made. 37 CFR 1.78(a)(5).

Petitioner did not submit a priority claim for the correct provisional application until after the 4 month/16 month deadline expired.

The Office requires petitioner to submit a petition under 37 CFR 1.78(a)(6) within two (2) months of the mail date of this decision. The petition must be accompanied by a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional and a preliminary amendment correcting the reference to the related provisional application. In addition, the petition must be accompanied by the $1,300.00 fee.

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

By mail until 05/01/03:	Commissioner for Patents Box DAC Washington, D.C. 20231
By mail on or after 05/01/03:	Mail Stop PETITION Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450
By facsimile:	(703) 308-6916 Attn: Office of Petitions

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

Telephone inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 15

Robin M. Silva
Dorsey & Whitney, LLP
Suite 3400
Four Embarcadero Center
San Francisco CA 94111-4187

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JUL 0 9 2003

OFFICE OF PETITIONS

In re Application of
Blackburn, et al.
Application No. 09/993,342
Filed: November 5, 2001
Attorney Docket No. A-68718-4/RFT/RMS/RMK
For: DEVICES AND METHODS FOR BIOCHIP MULTIPLEXING

ON PETITION

This is a decision on the petition under 37 CFR 1.78(a)(6), filed June 23, 2002 (certificate of mailing date June 19, 2003), which requests that the Office accept an unintentionally delayed claim under 35 USC 119(e) for the benefit of a prior filed provisional application.

The petition is **GRANTED.**

The instant petition requests acceptance of a delayed claim of benefit of provisional application No 60/245,840, filed November 3, 2000.

Generally, a claim of benefit under 35 U.S.C. 119(e) is required to be filed during the pendency of the nonprovisional application that seeks to claim the invention disclosed in an earlier-filed provisional application.[1] However, when the nonprovisional application is filed on or after November 29, 2000, as is in the instant case, the claim of benefit must be filed **not merely** during the pendency of the nonprovisional application, **but** within either 4 months of its filing date, or 16 months of the filing date of the provisional application, whichever is later.[2]

The claim of benefit submitted with the instant petition is filed during the pendency of the nonprovisional application, but subsequent to March 5, 2002. Such a delayed claim of benefit under 35 U.S.C. 119(e) may be accepted under a petition that includes:

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[1] Assuming the following conditions are also met: (1) the nonprovisional application is filed within 12 months of the filing date of the provisional application; (2) the provisional application is entitled to a filing date, has at least 1 common inventor as that named in the nonprovisional application, and discloses that common inventor's invention which is claimed in at least 1 claim of the nonprovisional application; (3) the basic filing fee for the provisional application has been paid. 35 U.S.C. 119(e)(1); 37 CFR 1.78(a)(4).

[2] 37 CFR 1.78(a)(5)(ii). In the instant case, the claim for benefit must be filed no later than 3/05/02 (4 months after the 11/05/01 filing date of the instant nonprovisional application).

(1) The claim of benefit (in the form of a specific reference to the provisional application) in an application data sheet or in the first sentence of the specification following the invention title, unless previously submitted;[3]

(2) The $1,300 surcharge set forth in 37 CFR 1.17(t);[4]

(3) A statement that the entire delay (between the time the claim of benefit was due and the filing of the claim) was unintentional.[5]

The petition meets the above requirements and is thus granted and the instant claim of benefit of Provisional Application No. 60/245,840 is accepted.

The application file is being forwarded to the Office of Initial Patent Examination for mailing of a corrected filing receipt that reflects the claim of benefit of Provisional Application No. 60/245,840, and correspondence regarding the revised projected publication date, if appropriate.

Telephone inquiries should be directed to Senior Petitions Attorney E. Shirene Willis at (703) 308-6712.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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[3] 37 CFR 1.78(a)(5)(iii), (6)(I). The instant petition is accompanied by an amendment that includes, in the 1st sentence of the specification, a reference to the claim of benefit of the provisional application.

[4] 37 CFR 1.78(a)(6)(ii).

[5] 37 CFR 1.78(a)(6)(iii); contained in petition.

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United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MCHALE & SLAVIN, P.A.
2855 PGA BLVD.
PALM BEACH GARDENS FL 33410

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JUN 3 0 2005

OFFICE OF PETITIONS

In re Application of	:	
George Jackowski et al	:	
Application No. 09/993,344	:	DECISION GRANTING PETITION
Filed: November 23, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 2132.096	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 4, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of February 4, 2004, is accepted as having been unintentionally delayed.

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

This matter is being referred to Technology Center AU 1646.

Karen Creasy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

LARRY W. THROWER
PERKINS COIE LLP
P.O. BOX 2168
MENLO PARK, CA 94026

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JUL 1 0 2002

OFFICE OF PETITIONS

In re Application of :
Cynthia A. Edwards et al :
Application No. 09/993,346 :
Filed: November 13, 2001 :
Attorney Docket No. 54600-8175.US03 :

NOTICE

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

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

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

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

This file is being forwarded to Technology Center 1600.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MICHAEL H. BANIAK
BANIAK PINE & GANNON
150 N. WACKER DRIVE, SUITE 1200
CHICAGO, IL 60606

COPY MAILED

OCT 0 2 2003

OFFICE OF PETITIONS

In re Application of
Scott D. Slomiany et al
Application No. 09/993,359
Filed: November 19, 2001
Attorney Docket No. 2100/23

NOTICE

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

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

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

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

This file is being forwarded to Technology Center 3700.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No.

Priya D. Subramony
Fulbright & Jaworski L.L.P.
Suite 2400
600 Congress Avenue
Austrin TX 78701

COPY MAILED

JAN 07 2008

OFFICE OF PETITIONS

In re Application of:		
Ashton-Rickardt et al.	:	
Application No. 09/993,363	:	
Filed: November 14, 2001	:	LETTER REGARDING
Attorney Docket No. ARCD:382US	:	PATENT TERM ADJUSTMENT
Attorney Docket No. 061300-0232	:	and
Title: INDUCTION OF IMMUNITY	:	NOTICE OF INTENT TO ISSUE
USING INHIBITORS OF GRANZYMES	:	CERTIFICATE OF CORRECTION
AND METHOD FOR A FIRE FIGHTING	:	
VEHICLE	:	

This is in response to the APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(B) filed August 16, 2007. Applicants request an adjustment of the initial patent term adjustment from 909 days to 842 days, a reduction of 67 days[1].

The request for reconsideration of the 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 **eight hundred and forty-one (841)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

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1 Petitioner has not set forth what calculations were used to arrive at the conclusion that a reduction of 67 days was warranted. Petitioner's arguments are consistent with the Office's conclusion that a reduction of 109 days is warranted.

On August 27, 2007, 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 909 days. The present application for patent term adjustment was timely filed[2] on or before payment of the issue fee. Applicants disclose that there should be an additional Applicant delay of 108 days due to the filing of a defective Appeal Brief on April 27, 2004. The Appeal Brief correcting the omission was filed on August 13, 2004.
A review of the record confirms that a defective Appeal Brief was filed on April 26, 2004 (see notice of non-compliance, mailed July 9, 2004). A compliant Appeal Brief was filed on August 13, 2004. Pursuant to 37 C.F.R. § 1.704(c)(7), this constitutes a delay of 109 days, not 108 days.

Pursuant to 37 C.F.R. § 1.702(a)(2), the Office is required to respond to an appeal taken under 35 U.S.C. § 134 not later than four months after the date on which the appeal was taken. A notice of appeal was filed on January 22, 2004, and a decision by the Board of Patent Appeals and Interferences was not mailed until September 20, 2006, which is four months and 973 days after the receipt of the response. See 37 C.F.R. § 1.703(a)(2).

Consequently, there were 973 days of PTO delay.

Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply after a reply has been filed is a failure to engage in reasonable efforts to conclude prosecution. A response to a restriction requirement was filed on December 24, 2002, and a supplemental response was filed on January 14, 2003. This constitutes a delay of 21 days.

Pursuant to 37 CFR § 1.704(b), the failure to respond to an Office action within three months of the mail date of the Office action is a failure to engage in reasonable efforts to conclude prosecution. A final rejection was mailed on September 10, 2003, and a Notice of Appeal was not filed until January 22, 2004. This constitutes a delay of 43 days. With the present petition, Petitioner has indicated that a letter restarting the period of time for response was mailed on October 20, 2003, and as such, the period of delay was 2 days. The Office agrees with Petitioner's assessment.

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2 PALM records indicate that the issue fee was paid on September 13, 2007.

Thus, the proper period of reduction is 132 (21 + 2 + 109 + 132) days.

In view thereof, the revised patent term adjustment is 841 days.

As this letter was submitted as an advisement to the Office of an error in Patentees' favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office. The petition fee has not been charged to Petitioner's Deposit Account.

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

Telephone inquiries specific to this matter should be directed to Paul Shanoski, Senior Attorney, at (571) 272-3225.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl. Copy of the Revised Patent Term Adjustment

PALM INTRANET

Day : Sunday
Date: 1/6/2008
Time: 18:02:51

PTA Calculations for Application: 09/993363			
Application Filing Date:	11/14/2001	PTO Delay (PTO):	973
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	64
Post-Issue Petitions:	0	Total PTA (days):	841
PTO Delay Adjustment:	-68		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
80	01/04/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		109	
79	01/04/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		2	
78	01/04/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	43		
66	07/16/2007	MAIL NOTICE OF ALLOWANCE			
65	07/12/2007	ISSUE REVISION COMPLETED			
64	07/12/2007	DOCUMENT VERIFICATION			
63	07/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
62	07/03/2007	NOTICE OF ALLOWABILITY			
61	04/28/2007	DATE FORWARDED TO EXAMINER			
60	04/24/2007	RESPONSE AFTER NON-FINAL ACTION			
59	01/30/2007	MAIL NON-FINAL REJECTION			
58	01/26/2007	NON-FINAL REJECTION			
57	01/26/2007	CASE DOCKETED TO EXAMINER IN GAU			
56	11/15/2006	AMENDMENT/ARGUMENT AFTER BPAI DECISION			
55	09/20/2006	MAIL BPAI DECISION ON APPEAL - REVERSED	973		33
54	09/20/2006	BPAI DECISION - EXAMINER REVERSED			
53	09/20/2006	BPAI DECISION 41.50(B)			
52	11/17/2005	WAIVER OF HEARING BY APPELLANT			
51	10/27/2005	NOTIFICATION OF APPEAL HEARING			
50	09/02/2005	DOCKETING NOTICE MAILED TO APPELLANT			
49	09/02/2005	ASSIGNMENT OF APPEAL NUMBER			
48	06/17/2005	APPEAL AWAITING BPAI DOCKETING			
47	03/21/2005	MAIL REPLY BRIEF NOTED BY EXAMINER			
46	03/18/2005	REPLY BRIEF NOTED BY EXAMINER			
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44	01/13/2005	DATE FORWARDED TO EXAMINER			
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15.7	03/26/2002	INFORMATION DISCLOSURE STATEMENT (IDS)			

		FILED			
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7	12/12/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
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1	11/14/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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OFFICE OF PETITIONS

In re Application of :
George Jackowski et al :
Application No. 09/993,366 : ON PETITION
Filed: November 21, 2001 :
Attorney Docket No. 2132.101 :

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR 1.113 in a timely manner to the final Office action mailed December 3, 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 March 4, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a Request for Continued Examination (RCE); (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final Office action of December 3, 2003 is accepted as having been unintentionally 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 Wan Laymon at (571) 272-3220.

The file is being forwarded to Technology Center AU 1641.

Wan Laymon

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

cc: FERRIS H. LANDER
2855 PGA BLVD
PALM BEACH GARDENS, FL 33410

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2855 PGA BLVD
PALM BEACH GARDENS FL 33410

OCT 19 2007

In re Application of
George Jackowskiet al
Serial No.: 09/993,366
Filed: November 21, 2001
Attorney Docket No.: 2132.101

: PETITION DECISION

This is a decision on the PETITION FOR ACCEPTANCE OF COLOR DRAWINGS UNDER 37 CFR 1.84(a)(2). The petition was filed August 10, 2007. Entry of color drawings requires: 1) three sets of the color drawings, 2) a proper amendment to the specification indicating color photographs or drawings are present in the file, and 3) the required fee under 37 CFR 1.17(h).

A review of the application record indicates that the petition meets all of the requirements for acceptance of color drawings. This is not to be construed that all of the drawings are accepted, only that the color drawings are acceptable.

The petition is **GRANTED**.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile transmission at 571-273-8300.

William R. Dixon, Jr.
Special Program Examiner
Technology Center 1600

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

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OFFICE OF PETITIONS

In re Application of	:
Steinunn Baekkeskov, et al.	: DECISION ON PETITION
Application No. 09/993,371	: UNDER 37 CFR 1.78(a)(3)
Filed: November 13, 2001	:
Atty Docket No. 2307AA-043030US	:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed on September 26, 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(s), unless previously submitted;[1]

[1] Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (*see* § 1.14).

> **(2)** 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 November 13, 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 application data sheet (ADS)(37 CFR 1.76), as well as 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 applications was submitted during the pendency of the instant nonprovisional application. *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.

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

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) 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(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), 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

This application is being forwarded to Technology Center Art Unit 1648 for consideration by the Examiner of the amendment filed October 3, 2003, including applicant's claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed nonprovisional applications.

Telephone inquiries related to this decision should be directed to Sherry Brinkley at 703-305-9220.

Frances Hicks

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

ATTACHMENT: Corrected Filing Receipt

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In re Application of	:	
Baekkeskov et al.	:	DECISION ON APPLICATION
Application No. 09/993,371	:	FOR
Filed: November 13, 2001	:	PATENT TERM ADJUSTMENT
Atty Docket No.2307AA-043030US	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705," filed May 6, 2005. Applicants submit that the correct patent term adjustment as of the date of allowance is two hundred twenty-five (225) days. In part, Applicants make this assertion on the basis that the Office has failed to issue a patent within 3-years of the actual filing date of the application.

To the extent that the instant application for patent term adjustment requests reconsideration of the patent term adjustment at the time of the mailing of the notice of allowance as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the

request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

As to the application for patent term adjustment at the time of mailing of the notice of allowance, this request 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 one hundred forty-three (143) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 4, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. On May 6, 2005, the instant request for reconsideration was timely filed[1]. Applicants assert that the additions to PTA total 382 days, as follows:

1) 167 days for Office delay in issuing a first Office action on June 30, 2003;
2) 133 days for Office delay in not taking action until June 16, 2004 in response to applicants' response filed October 3, 2003; and
3) 82 days for the Office taking in excess of three years to issue the patent, using the date of mailing of the notice of allowance as the end date for this adjustment.

Applicants further assert that the 382 days should be reduced by 157 days for applicant delay, as follows:

4) 124 for applicant delay in responding to the Notice to File Missing Parts of Application mailed January 7, 2002;
5) 2 days for applicants responding on October 3, 2003 to the Office action mailed June 30, 2003;

[1] PALM records indicate that the Issue Fee was also received on May 6, 2005.

6) 31 days for applicants responding on October 18, 2004 to the Office action mailed June 16, 2004.

Applicants' basis for and amounts of adjustment and reduction as set forth in points 1-6 above have been considered. As to point 3 and an adjustment of 82 days, any required decision on the period of adjustment for Office delay in taking more than 3 years to issue the patent is being held in abeyance. The patent should issue with a revised patent term adjustment including any period of adjustment pursuant to § 1.703(b).

As to points 1, 4, and 6, the record includes adjustments and reductions on the bases set forth by applicants. Further, the record agrees with applicants' calculation of a period of reduction of 124 days (point 4). However, the calculation of record for point 1 is 168 days, not 167 days. 168 days is correct, 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), January 14, 2002, and ending on the date of mailing of an action under 35 U.S.C. 132, June 30, 2003. See 1.703(a)(1). Likewise, the calculation of point 6 is 32 days, not 31 days. 32 days is correct, counting the number of days in the period beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, September 17, 2004, and ending on the date the reply was filed, October 18, 2004. See § 1.704(b).

As to points 2 and 5 above, applicants are correct that the record requires correction of the amounts of adjustment and reduction on these bases. The record establishes that applicants filed an amendment on October 3, 2003, not February 20, 2004. As indicated in point 2, using the proper date of October 3, 2003, a period of adjustment should be entered for Office delay in taking action in response until June 16, 2004. However, this period of adjustment is 134 days, not 133 days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed, February 4, 2004, and ending on the date of mailing of either an action under 35 U.S.C. 132, June 16, 2004. See 1.703(a)(2). Likewise, using the proper date of October 3, 2003, the entry of a reduction of 143 days for applicant delay in responding to the Office action mailed June 30, 2003 is incorrect. However, this period of reduction is 3 days, not 2

days, counting the number of days in the period beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, October 1, 2003, and ending on the date the reply was filed, October 3, 2003. See § 1.704(b).

In view thereof, the patent term adjustment at the time of the mailing of the notice of allowance is one hundred forty-three (143) days (168 + 134 days of adjustment - 124 + 3 + 32 days of reduction).

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

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

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 updated PAIR screen

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Paper No. 16

MCHALE & SLAVIN, P.A.
2855 PGA BLVD
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OFFICE OF PETITIONS

In re Application of :
George Jackowski, et al. :
Application No. 09/993,392 :
Filed: November 23, 2001 :
Attorney Docket No. 2132.097 :

ON PETITION

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

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed November 28, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on March 1, 2004.

Receipt is acknowledged of the Amendment and the Supplemental Information Disclosure Statement (IDS) filed January 13, 2005, with the instant petition.

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

The application file is being forwarded to Technology Center 1600, Art Unit 1641 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

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OFFICE OF PETITIONS

In re Application of
Jackowski et al.
Application No. 09/993,399
Filed: November 23, 2001
Attorney Docket No.: 2132.091

DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed July 28, 2005, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a reply to an Office Action mailed November 4, 2003. The Office Action set a one (1) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on December 5, 2003. A Notice of Abandonment was mailed on July 7, 2004.

This petition is hereby **GRANTED**.

The Office hereby acknowledges the receipt of the Response to the Restriction and Election Requirement submitted with the instant petition.

This application is being forwarded to Technology Center 1600 for further processing.

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

Charlema R. Grant

Charlema R. Grant
Petitions Attorney
Office of Petitions

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INFINEON
PO BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Application :
Boehler, et al. :
Application No. 09/993,415 : PATENT TERM ADJUSTMENT
Filed: November 5, 2001 :
Dkt. No.: 2001 P 16795US :
(1080/136) :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT CORRECTION PURSUANT TO 37 C.F.R. § 1.705(b)," filed April 14, 2005.

Applicants argue that the Office will have failed to issue a patent within three years of the filing date of the application in accordance with 37 CFR 1.702(b).

Applicants are advised that decision on the instant request for reconsideration of patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is hereby **held in abeyance** subject to an issuance date being set by the Office of Patent Publications at which time the PTA will be routinely recalculated.

Applicants are further advised to submit a letter to the Office within two months of the issuance of the patent if, at the time of issuance of the patent, the appropriate adjustment under 37 C.F.R. § 1.702(b) has not been accorded.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 505 days.

The Office acknowledges receipt of the required application fee of $200.00. No additional fee will be required if applicant is solely requesting reconsideration of additional time related to failing to issue the patent within three years from the actual filing date of the application in accordance with 37 CFR 1.702(b).

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.

Kerry A Fries for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
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BRINKS HOFER GILSON & LIONE
INFINEON
PO BOX 10395
CHICAGO, IL 60610

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OFFICE OF PETITIONS

In re Patent No. 6,950,971 :
Issued: September 27, 2005 : LETTER REGARDING PTA AND
Application No. 09/993,415 : NOTIFICATION OF INTENT TO ISSUE
Filed: November 5, 2001 : CERTIFICATE OF CORRECTION
Atty. Dkt. No.: 2001 P 16795US :
(1080/136) :

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed November 2, 2005. The Office thanks patentees for their good faith and candor in bringing this to our attention.

The above-identified application issued as U.S. Pat. No. 6,950,971 on September 27, 2005. The patent issued with a patent term adjustment (PTA) of 552 days. Patentees, however, indicate that there may be an error in the total amount of days determined and indicate that the adjustment of 552 days may extend the term of the patent by too many days.

A review of the application history reveals that at the time of issuance, the patent was entitled to an overall adjustment of 549 days.

An overall adjustment of 575 days can be attributed to the Office. An adjustment of 528 days, as undisputed by patentees, can be attributed to the Office in accordance with 37 CFR 1.702(a)(1).

A further adjustment of three days, as undisputed by patentees, can be attributed to the Office in accordance with 37 CFR 1.702(a)(2).

A further adjustment of 44 days, rather than 47 days as previously accorded, in accordance with 37 CFR 1.702(a)(4) can be attributed to the Office. The adjustment began August 15, 2005, the day after the date that is four months after the date that the issue fee was received on April 14, 2005, and ended September 27, 2005, the date the patent issued.

The adjustment of 575 was properly reduced 26 days, as undisputed by patentees, in accordance with 37 CFR 1.704(b).

In view thereof, at the time of allowance, the application was entitled to an adjustment of 549 days.

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the $200.00 application fee under 37 CFR 1.705(b).

This application will be forwarded to the Certificate of Corrections branch for issuance of a certificate of correction to indicate that the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 549 days.

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

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

Enclosure: Draft Certificate of Correction

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Paper No. 4

Thomas E. Kocovsky, Jr.
FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP
Seventh Floor
1100 Superior Avenue
Cleveland OH 44114-2518

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MAY 1 7 2002

OFFICE OF PETITIONS

In re Application of
Wu
Application No.: 09/993,426
Filed: November 16, 2001
Attorney Docket No. PKR 2 0715
FOR: MULTIPLE PREPARATORY EXCITATIONS AND READOUTS DISTRIBUTED OVER THE CARDIAC CYCLE

: DECISION GRANTING
: PETITION

This is a decision on the petition entitled "REQUEST FOR CORRECTED FILING RECEIPT--PETITION TO ACCORD THE FILING DATE SHOWN ON THE EXPRESS MAIL LABEL "DATE-IN," filed February 19, 2002 (certificate of mailing date February 1, 2002), requesting that the above-identified application be accorded a filing date of November 16, 2001, instead of the presently accorded date of November 26, 2001.

Petitioner alleges that the application was deposited in "Express Mail" service with the U. S. Postal Service, on November 16, 2001. In support, petitioner provided a copy of the Express Mail label, receipt no. EL852685033US, showing a Date-In of November 16, 2001. The same Express Mail receipt number was referred to in the original Application Transmittal Letter submitted with the original filing. Petitioner requests that the application be accorded a filing date of November 16, 2001.

The Office considers the date the paper or fee is shown to have been deposited as "Express Mail" to be the "Date In" on the Express Mail label, MPEP 513. That is the date that verifies that the package was actually mailed. In view of the above, the evidence is convincing that the application was deposited as "Express Mail" with the US Postal Service on November 16, 2001.

In view of the above, the petition is granted.

As this is a feeless petition, no petition fee has been or will be charged.

The application will be returned to the Office of Initial Patent Examination for further processing with a filing date of November 16, 2001. The Office of Initial Patent Examination will mail a corrected filing receipt showing the filing date as November 16, 2001.

Thereafter, the application will be returned to Technology Center 3700 for examination in due course.

Telephone inquiries concerning this matter 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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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
09/993,426	11/16/2001	3737	1612	PKR 2 0715	18	24	3

CONFIRMATION NO. 6865

CORRECTED FILING RECEIPT

OC000000017976004

Thomas E. Kocovsky, Jr.
FAY, SHARPE, FAGAN, MINNICH & McKEE, LLP
Seventh Floor
1100 Superior Avenue
Cleveland, OH 44114-2518

Date Mailed: 02/02/2006

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)

Dee H. Wu, Shaker Heights, OH;

Assignment For Published Patent Application

PHILIPS MEDICAL SYSTEMS (CLEVELAND), INC.

Power of Attorney: None

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 01/17/2002

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is US09/993,426

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

Early Publication Request: No

Title

MULTIPLE PREPARATORY EXCITATIONS AND READOUTS DISTRIBUTED OVER THE CARDIAC CYCLE

Preliminary Class

600

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.

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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).

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Title 35, United States Code, Section 184
Title 37, Code of Federal Regulations, 5.11 & 5.15

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

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

NOT GRANTED

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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MAILED

JUL 13 2005

Technology Center 2100

Paul S. Hunter
FOLEY & LARDNER
321 North Clark Street
Suite 2800
Chicago, IL 60610-4764

In re Application of:
DiPierro
Appl. No.: 09/993,450
Filed: November 06, 2001
For: SYSTEMS, METHOD AND DEVICES FOR SECURE COMPUTING

DECISION ON PETITION UNDER 37 CFR § 1.59

This is a decision on the petition under 37 CFR § 1.59(b), May 09, 2002 to expunge information submitted pursuant to MPEP § 724.02.

The petition is **DISMISSED**.

Petitioner requests that the 3 CD-ROMs submitted on April 26, 2002 be expunged from the record. Petitioner states that the information contains materials that are subject to a trade secret material which has not been made public. The petition fee set forth in 37 CFR 1.17(h) has been.

The petition is premature because the application has not been allowed or abandoned. 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 petition to expunge must be dismissed at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." Once prosecution on the merits is closed, applicant may re-submit a petition to expunge the information. No further fee is required for such a second submission of a petition under 37 CFR § 1.59 to expunge information. If the information is not considered by the examiner to be material, the information will be returned to applicant.

Vincent N. Trans
Special Program Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

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Paper No.

SEP 13 2004

WESTMAN, CHAMPLIN & KELLY
INTERNATIONAL CENTRE, SUITE 1600
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

In re Application of:
Kevin I. Bertness
Serial No.: 09/993468
Filed: November 14, 2001
Attorney Docket No.: **C382.12-0097**

NOTICE OF WITHDRAWAL
FROM ISSUE
UNDER 37 CFR § 1.313

The purpose of this communication is to inform you that the above-identified application is being withdrawn from issue pursuant to 37 CFR § 1.313.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed April 13, 2004, are hereby vacated.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

Upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that any previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund, or a credit to a Deposit Account.

Telephone inquires should be directed to Paula Bradley at (571) 272-2800 ext 33.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 11-20-07

TO SPE OF : **Technology Center** 3682

09/993531

SUBJECT : Request for Certificate of Correction on Patent No.: 7125356 B2

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

Please complete this form and return with file, within 7 days to:
Palm location **7580, Certificates of Correction Branch – South Tower – 9A22**
If response is for an IFW, **return to employee (named below) via PUBSCofC Team in MADRAS.**
With respect to the change(s) requested, correcting Office and/or Applicant's errors, should the patent read as shown in the certificate of correction (COCIN)? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Thank You For Your Assistance

Elisha Evans
Certificates of Correction Branch
Tel. No. 703-308-9390 EXT 110

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

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

Comments:

NOT APPROVED - CHANGES TO THE CLAIMS ARE NOT APPROVED. THE PROPOSED CHANGES AFFECT THE SCOPE OF THE CLAIMS.

APPROVED - CHANGES TO THE SPECIFICATION ARE APPROVED.

RICHARD RIDLEY
SUPERVISORY PATENT EXAMINER

SPE

3682
Art Unit

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JERRY K. MUELLER, JR.
MUELLER AND SMITH, LPA
7700 RIVERS EDGE DRIVE
COLUMBUS OH 43235

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NOV 17 2004

OFFICE OF PETITIONS

In re Application of	:	
Peter Van Voris et al.	:	
Application No. 09/993,611	:	ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. TMG 2-001-3	:	

This is a decision on the petition under 37 CFR 1.137(b)[1], filed September 28, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely reply to the final Office Action mailed January 5, 2004. A response was filed April 1, 2004 but by Advisory Action of July 30, 2004, petitioner was advised that the response did not place the application in condition for allowance. This application became abandoned on April 6, 2004. Accordingly, a Notice of Abandonment was mailed September 22, 2004.

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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)).

Petitioner has submitted a Request for Continued Examination (RCE) and indicated that the previously submitted amendment serves as the submission required under 37 CFR 1.114.

The application is being forwarded to Technology Center 1616 for processing of the RCE.

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

Patricia Faison-Ball

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

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MINNEAPOLIS, MN 55440-1022

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MAR 27 2007

OFFICE OF PETITIONS

In re Application of
Ann-Kristin Karlsson et al.
Application No. 09/993,669
Filed: November 27, 2001
Attorney Docket No. 06275-160002

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

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 26, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 365(c) for the benefit of priority to prior-filed international application designating the United States of America (Application No. PCT/SE98/02039, filed November 11, 1998).

The petition under 37 CFR 1.78(a)(3) is **DISMISSED** as moot.

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

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

The instant petition seeks acceptance of a late claim for priority to a prior-filed PCT national stage application by way of an amendment to the specification, which reads: "This application is a continuation of U.S.S.N. 09/230,781, filed January 29, 1999 (now U.S. Patent No. 6.392,036), which is the National Stage application of International Application No. PCT/SE98/02039, filed November 11, 1998, which claims the benefit of Swedish Patent Application No. 9704186-7, filed November 14, 1997. The contents of these applications are incorporated herein by reference in their entirety."

As set forth in MPEP 1893.03(c), page 1800-199, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371.

In view of the above, the petition under 37 CFR 1.78(a)(3) is dismissed as involving a moot issue.

In view of the dismissal of the instant petition as moot, the $1,370 petition fee submitted is not necessary and will be credited back to petitioner's deposit account 06-1050 in due course.

Any inquiries concerning this decision may be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This matter is being referred to Technology Center AU 1623.

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 fax: (571) 272-8300
ATTN: Office of Petitions

Christina Tartera Donnell for

Ira Lazarus
Supervisory Petitions Examiner
Office of Petitions

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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPL NO.	FILING OR 371(c) DATE	ART UNIT	FIL FEE REC'D	ATTY.DOCKET NO	TOT CLMS	IND CLMS
09/993,669	11/27/2001	1623	3434	06275-160002	28	3

CONFIRMATION NO. 1605

CORRECTED FILING RECEIPT

OC000000023110965

26161
FISH & RICHARDSON PC
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

Date Mailed: 03/26/2007

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)

Ann-Kristin Karlsson, Staffanstorp, SWEDEN;
Cheryl Larrivee-Elkins, Framingham, MA;
Ove Molin, Huddinge, SWEDEN;

Power of Attorney:

William Booth--28933
John Freeman--29066
Timothy French--30175
J Fasse--32983
John Gagel--33499
Janis Fraser--34819
John Hayden--37640
Eldora Ellison--39967

Domestic Priority data as claimed by applicant

This application is a CON of 09/230,781 01/29/1999 PAT 6,392,036
which is a 371 of PCT/SE98/02039 11/11/1998

Foreign Applications

SWEDEN 9704186-7 11/14/1997

If Required, Foreign Filing License Granted: 12/28/2001

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is
US09/993,669

Projected Publication Date: Not Applicable

Non-Publication Request: No

Early Publication Request: No

Title

Sterile powders, formulations, and methods for producing the same

Preliminary Class

514

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

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

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Title 37, Code of Federal Regulations, 5.11 & 5.15

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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

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Paper No. 5

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K STREET, NW
BOX IP
WASHINGTON DC 20007

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JUL 3 0 2003

OFFICE OF PETITIONS

In re Application of
Song Han, Prabuddha Biswas, and Jing Wu
Application No. 09/993,670
Filed: November 27, 2001
Attorney Docket No.: 19111.0053
Title: METHOD AND SYSTEM FOR PROVIDING LOCATION-BASED EVENT SERVICE

DECISION DISMISSING PETITION UNDER 37 C.F.R. §1.137(F) AS MOOT

This is a decision on the petition filed on May 29, 2003, pursuant to 37 C.F.R. §1.137(f), to revive the above-identified application.

A grantable petition pursuant to 37 CFR 1.137(f) must be accompanied by:

(1) Notification of the filing of an application in a foreign country or under a multinational treaty that requires 18 month publication[1];
(2) The petition fee as set forth in 37 C.F.R. § 1.17(m), and;
(3) A statement that the entire delay in filing the notice from the date that the notice was due under 35 U.S.C. §122(b)(2)(B)(iii) until the date the notice was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

Petitioner states that the instant nonprovisional application is the subject of an application filed in either a foreign country or an international application on November 26, 2002.

On November 26, 2002, a Request to Rescind the Nonpublication Request was filed with the Office. Therefore, the Nonpublication Request was rescinded prior to the foreign filing. If an applicant makes a nonpublication request and then rescinds the nonpublication request before or

1 See PTO/SB/36 and paragraph on PTO/SB/64a for further information. Both may be downloaded at http://www.uspto.gov/web/forms/index.html.

on the date a counterpart application is filed in an eighteen-month publication country, the application will be treated as if the nonpublication request were never made[2].

For the reason set forth above, the petition under 37 C.F.R. §1.137(f) is **DISMISSED AS MOOT**.

As such, no petition fee is necessary. The petition fee has been refunded to petitioner's Deposit Account, as authorized in the petition.

After the mailing of this decision, the application file will be forwarded to Technology Center 2100 for further processing.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011.

Paul Shanoski

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

2 Rescission generally has the effect of voiding, repealing, or annulling a previous action. See Black's Law Dictionary 1308 (7th ed. 1999) (second definition: to make void, to repeal, or annul). Thus, if 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 under 35 U.S.C. § 122(b)(2)(B)(i) will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/35usc122b2binterpret.htm.

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Paper No. 7

Finnegan, Henderson, Farabow,
Garrett & Dunner, L.L.P.
1300 I Street, N.W.
Washington DC 20005-3315

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JUL 0 3 2002

OFFICE OF PETITIONS

In re Application of :
Norimasa Niiya :
Application No. 09/993,708 : DECISION GRANTING PETITION
Filed: November 27, 2001 :
Attorney Docket No. 04329.2698 :
Title: KEY TELEPHONE SYSTEM, :
KEY TELEPHONE, INTERFACE UNIT, :
AND TRANSMISSION SCHEME :
DETERMINATION METHOD :

This is a decision on the "Response to Notice of Omitted Item(s) in a Nonprovisional Application", filed February 21, 2002, which is properly treated as a petition requesting that Figures 14 and 15 be accorded a filing date of November 27, 2001, as part of the original disclosure.

On November 27, 2001, the above-identified application was filed. On December 11, 2001, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application had been accorded a filing date of November 27, 2001, and advising applicant that Figures 14 and 15 appeared to have been omitted.

In response, on February 21, 2002, applicants filed the present petition. The petition is further accompanied by a copy of applicants' postcard receipt acknowledging receipt of sixteen (16) Figures in the United States Patent and Trademark Office (Office) on November 27, 2001. Applicants request Figures 14 and 15 be accorded a filing date of November 27, 2001.

Upon review of the record, Figures 14 and 15 have not been located among the application papers. However, the evidence is

convincing that the application papers deposited on November 27, 2001, included Figures 14 and 15, and were subsequently misplaced in the Office. Therefore, the application, including Figures 14 and 15, was complete on filing and entitled to a filing date of November 27, 2001.

Accordingly, the petition is **GRANTED**.

The Notice mailed December 11, 2001 was sent in error and is hereby **VACATED**. Therefore, no petition fee is necessary.

The application file is being returned to the Office of Initial Patent Examination for further processing with a filing date of November 27, 2001, using Figures 1-13 and 16 which have been located in the file, as well as Figures 14 and 15, submitted on November 27, 2001.

It is noted that the file also contains a Request for a Corrected Filing Receipt, as the Filing Receipt mailed on February 1, 2002 indicates a filing date of January 17, 2002. This is obviously a misprint, and a corrected filing receipt has been included with this decision.

Any inquiries related to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.

Beverly M. Flanagan

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

Encl. Corrected 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

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OCT 1 2 2005

OFFICE OF PETITIONS

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK NY 10112

In re Application of	:	
Mitsru Kurita et al	:	
Application No. 09/993,725	:	ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. 862.782 CI/DI	:	

This is a decision on the petition, filed October 5, 2005, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED**.

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

Petitioner is advised that the issue fee paid on September 6, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

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

The examiner of Technology Center AU 2624 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

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

Paper No. 7

SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

COPY MAILED

AUG 1 9 2002

OFFICE OF PETITIONS

In re Application of
Wild et al.
Application No. 09/993,777
Filed: November 6, 2001
Attorney Docket No. SY01106KQ1

: DECISION GRANTING-IN-PART
: PETITION

This is a decision on the petition filed April 3, 2002, requesting that the above-identified application be accorded a filing date of November 6, 2001, with Figures 1-35 as a part of the original disclosure.

On November 6, 2001, applicants filed the above-identified application. However, on February 27, 2002, the Office of Initial Patent Examination mailed a "Notice Of Incomplete Application," requiring drawings of applicants' invention and stating that the filing date would be the date of receipt of the omitted drawings. It is noted that the specification filed on November 6, 2001, describes drawings containing Figures 1-35; however, it appears the United States Patent and Trademark Office (Office) did not receive these drawings. Additionally, the Notice stated that applicants must provide a statement that the content of the sequence listing information recorded in the computer readable form is identical to the written (on paper or compact disc) sequence listing, and where applicable, includes no new matter.

In response, applicants filed the present petition, a copy of the drawing sheets consisting of Figures 1-35, paid the petition fee, and submitted a sequence listing statement.

As stated in MPEP § 601.01(f), it is the practice of the Office to treat an application that contains at least one process or method claim as an application for which a drawing is <u>not</u> 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 and the names of all the inventors.

This application contains method claims. 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).

MPEP § 601.01(g) states that if an application is filed without all of the drawing figure(s) referred to in the specification, a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

In view of the above, the requirement for drawings as set forth in the "Notice of Incomplete Application" mailed February 27, 2002, was sent in error and is hereby vacated. The application is accorded a filing date of November 6, 2001.

The petition is granted to the extent that the application will be accorded the filing date of November 6, 2001, without the drawings containing Figures 1-35 as a part of the original disclosure of this application.

The application file is being returned to the Office of Initial Patent Examination for further processing with a corrected filing date of November 6, 2001, indicating in the Office records that "0" sheets of drawings were present on filing, and the mailing of a corrected filing receipt.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
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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SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1 1990)
2000 GALLOPING HILL RD
KENILWORTH NJ 07033-0530

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FEB 22 2005

OFFICE OF PETITIONS

In re Application	:	
Wild, et al.	:	
Application No. 09/993,777	:	DECISION ON APPLICATION
Filed: November 6, 2001	:	FOR PATENT TERM ADJUSTMENT
Atty Docket No. SY01106 KQ1 US	:	

This is a decision on the "REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(b)OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE NOTICE OF ALLOWANCE," filed August 23, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from five hundred zero (0) days to nine (9) days.

The application for patent term adjustment is **GRANTED** to the extent indicated herein. However, applicants' request that an additional PTO delay of twenty-four (24) days be assessed is being **HELD IN ABEYANCE** until after the actual patent date.

Applicants are given two months from the issue date of the patent to request reconsideration of the patent term adjustment indicated on the patent application. Applicants may seek such reconsideration without payment of the fee. A copy of this decision should accompany applicant's written request for reconsideration.

On May 24, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is

zero (0) days. On August 23, 2004, applicants timely[1] submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is nine (9) days.

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

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of seventy-eight (78) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and four (4) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by applicants' delay of two hundred twenty eight (228) days and ninety-seven (97) days, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The PTO delays of 78 days and 4 days, and applicants' delay of 97 days have been reviewed and found to be correct. The adjustment of 228 days is at issue.

The adjustment of 228 days has been found to be incorrect. A review of the application file reveals that a Notice of Incomplete Nonprovisional Application was mailed on February 27, 2002. Applicants timely filed a complete response to this notice on April 3, 2002. As this was timely pursuant to 37 CFR 1.704(b), no applicant delay should have been assessed.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **zero (0) days** (82 (78+4) days of PTO delay and 97 days of applicant delay).

The $200.00 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 19-0365, as authorized.

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

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

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

Enclosure: Copy of Revised PAIR Screen

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[1] PALM records indicate that applicants paid the issue fee on August 24, 2004.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/1/09

TO SPE OF : ART UNIT 2455

SUBJECT : Request for Certificate of Correction for Appl. No.: 09993787 Patent No.: 7469270 B1

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

FOR IFW FILES:

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

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

FOR PAPER FILES:

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

Certificates of Correction Branch (CofC)
South Tower - 9A22
Palm Location 7580
You can fax the 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: Changes comprise replacing "presenting" with "present" in independent claim 6

SPE AU 2455
SPE

2455
Art Unit

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MAILED

JUN 17 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Allen D. Brufsky, P.A.
8930 Bay Colony Drive
Naples, FL 34108

In re application of
Darin Prizzi
Application No. 09/993,820
Filed: November 16, 2001
For: TOWEL HOLDER

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in reply to the Petition To Withdraw Holding of Abandonment under 37 CFR 1.181(a) filed April 26, 2004.

The petition is **DISMISSED**.

A review of the application reveals that a Notice of Non-Compliant Amendment was mailed August 26, 2003 in response to the amendment filed August 7, 2003. A Notice of Abandonment was mailed March 9, 2004 because of applicant's failure to reply to the Non-Compliant Notice.

Applicant states that the Non-Compliant Notice and the Notice of Abandonment were not received.

A review of the record file reveals that both Notices were returned to the Office as undeliverable mail. The envelope bearing the Non-Compliant Notice is marked "Forward time exp rtn to send". It is further noted that the postcard receipt associated with the amendment filed August 7, 2003 and the address provided in the petition do not match the correspondence address of record.

The MPEP 601.03 states,

"Where an attorney or agent of record (or applicant, if he or she is prosecuting the application *pro se*) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP code)..."

"The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made. 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 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."

Because applicant apparently failed to file a change of correspondence address, there was no apparent Patent and Trademark Office error in the mailing of the Office communication and the holding of abandonment will not be withdrawn.

Given that applicant failed to change the correspondence address before the mailing of the Non-Compliant Notice mailed August 26, 2003, it is not surprising that applicants failed to receive the above noted Notices. While MPEP 711.03(c) does give applicant the ability to petition to show that a communication from the Patent Office was not received, this is predicated on the fact that applicant was able to receive mail at the correspondence address. MPEP 711.03(c) also requires applicant to show that "due care was taken to adhere to the requirement for prompt notification in each concerned application for the change of address". Since applicant was apparently not able to receive mail at the address of record, and the Notice mailed August 26, 2003 was correctly mailed to the address of record, the procedure outlined in 1156 OG 53 is not available to applicant.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (**2**) the petition fee required by 37 CFR 1.17(m); and (**3**) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is $110. The fee for a petition under the unintentional standard is $1,330. If applicants have, or can qualify as a "small entity" and do so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

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

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

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

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."

A copy of this decision is being mailed to the address appearing in the petition as a courtesy. Applicant is required to file a proper request for a change of address if he wishes to receive future correspondence at this address.

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

KJD/mjz: 6/7/04

CC: Allen D. Brufsky, P.A.
475 Galleon Drive
Naples, FL 34102

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.: 06-06

Paper No: __

ALLEN D. BRUFSKY, P.A.
600 5TH AVENUE SOUTH
SUITE 205
NAPLES FL 34102

COPY MAILED
JUN 19 2006
OFFICE OF PETITIONS

In re Application of	:	
Prizzi	:	DECISION
Application No.: 09/993,820	:	
Filing Date: 16 November, 2001	:	
Attorney Docket No. Prizzi-2	:	

This is a decision on the series of petition filed on 30 June, 2004, on 7 and 11 March, 2005, and on 17 March, 2006, to withdraw the holding of abandonment and considered under 37 C.F.R. §1.181, alternatively, to revive the application under 37 C.F.R. §1.137(b) as having as abandoned due to unintentional delay–however, the petitions in question have only been received from the Technology Center and into the Office of Petitions at this writing.

NOTICE:

Petitioner has submitted Notice(s) of Change of Address on 30 June, 2004 (the June 2004 Notice), and on 11 March, 2005 (the March 2005 Notice), and both Notices expressly associated with Customer No. 32,575.

The only address ever associated by Petitioner with Customer No. 32,575 is the Naples, Florida, address (the Naples address) set forth above.

While it appears from the March 2005 Notice that Petitioner may expect the Office to direct communications to the mailing address of Christopher & Weisberg, PA (i.e., 200 East Las Olas Boulevard/Ste. 2040, Fort Lauderdale, FL 33301 (the Ft. Lauderdale address)), Petitioner never has acted to direct the Office to change the address associated with Customer No. 32,575 from the Naples address to the Ft. Lauderdale address.

Thus, while a copy of this decision is being mailed as a courtesy to the Ft. Lauderdale address, until Petitioner formally Notices the Office to change the address associated with Customer No. 32,575 to the Ft. Lauderdale address, all communications will, under Rule, be directed to the Naples address.

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **DISMISSED**, and the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 7 May, 2003, with reply due absent extension of time on or before 7 August, 2003;

- Petitioner filed a reply on 7 August, 2003, however, it was deemed not proper and a Notice of Non-Compliant Amendment was mailed on 26 August, 2003 (the August 2003 Notice), to which a reply was due, absent extension of time, on or before 26 September, 2003–but in no case after 26 November, 2003;

- the Office mailed the Notice of Abandonment on 9 March, 2004 (the March 2004 Notice);

- on 20 April, 2004, Petitioner first sought withdrawal of the holding of Abandonment, and filed therewith a reply in the form of an amendment, averring at that time non-receipt of the August 2003 and March 2004 Notices, which request was dismissed on 17 June, 2004, *inter alia*, because Petitioner clearly had changed addresses and failed to Notice the Office of the change;

- Petitioner renewed his petition on 30 June, 2004, and added a petition to revive the application as abandoned due to unintentional delay, and included therewith a reply in the form of an amendment and/or pointed to a previously filed and unaddressed amendment of April 2004–**notably, Petitioner averred that his signed papers previously submitted indicated a customer number associated with a proper mailing address, and, thus, Petitioner acknowledged therein that he had ignored the requirement under the Rules of Practice that every paper, including a Notice of Change of Address, be a separate paper (see: 37 C.F.R. §1.4(c));**

- Petitioner renewed his petitions on 7 and 11 March, 2005, and on 17 March, 2006, to withdraw the holding of abandonment or alternatively to revive under 37 C.F.R.

§1.137(b), again with the previously unaddressed amendment of April 2004 as a reply, and further filed the equivalent of Status Inquiries on 29 December, 2005, and 6 April, 2006;

- out of an abundance of caution, Petitioners always are reminded that each request to the Office must be filed as a separate paper (see: 37 C.F.R. §1.4(c)), and 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]

It appears that with the petition and fee, the reply in the form of the amendment filed in April 2004 and previously and heretofore unaddressed by the Office, and the statement of unintentional delay, Petitioner has satisfied the 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).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

---

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[8]

Further, the commentary at MPEP §711.03(c) provides:

* * *

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

* **

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

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[8] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

> Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988). (Emphasis supplied.)
>
> * * *

Thus, as of this writing Petitioner appears not to have satisfied the showing requirements described above–particularly in light of Petitioner's failure to Notice the Office properly as to his Change of Address in 2003.

Allegations as to
Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995. Petitioner may review the commentary set forth at MPEP §711.03(c) and the language at 37 C.F.R. §1.137(b) for guidance.

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply, showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

Petitioner once again is reminded to Notice the Office properly as to the address to be associated with his Customer No. 32,575.

If it is Petitioner's intent to have Customer No. 32,575 associated with the mailing address of Christopher & Weisberg, PA (i.e., 200 East Las Olas Boulevard/Ste. 2040, Fort Lauderdale, FL 33301 (the Ft. Lauderdale address)), Petitioner must so Notice the Office with and in a separately filed paper to that effect.

CONCLUSION

Because Petitioner has not satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 is **dismissed**; however, because Petitioner appears to have satisfied the regulatory requirements, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to the Examiner in Technology Center 3600 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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

MAILED

JUN 17 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

Allen D. Brufsky, P.A.
8930 Bay Colony Drive
Naples, FL 34108

In re application of
Darin Prizzi
Application No. 09/993,820
Filed: November 16, 2001
For: TOWEL HOLDER

DECISION ON PETITION
TO WITHDRAW THE
HOLDING OF ABANDONMENT

This is in reply to the Petition To Withdraw Holding of Abandonment under 37 CFR 1.181(a) filed April 26, 2004.

The petition is **DISMISSED**.

A review of the application reveals that a Notice of Non-Compliant Amendment was mailed August 26, 2003 in response to the amendment filed August 7, 2003. A Notice of Abandonment was mailed March 9, 2004 because of applicant's failure to reply to the Non-Compliant Notice.

Applicant states that the Non-Compliant Notice and the Notice of Abandonment were not received.

A review of the record file reveals that both Notices were returned to the Office as undeliverable mail. The envelope bearing the Non-Compliant Notice is marked "Forward time exp rtn to send". It is further noted that the postcard receipt associated with the amendment filed August 7, 2003 and the address provided in the petition do not match the correspondence address of record.

The MPEP 601.03 states,

"Where an attorney or agent of record (or applicant, if he or she is prosecuting the application *pro se*) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP code)..."

"The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made. 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 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."

Because applicant apparently failed to file a change of correspondence address, there was no apparent Patent and Trademark Office error in the mailing of the Office communication and the holding of abandonment will not be withdrawn.

Given that applicant failed to change the correspondence address before the mailing of the Non-Compliant Notice mailed August 26, 2003, it is not surprising that applicants failed to receive the above noted Notices. While MPEP 711.03(c) does give applicant the ability to petition to show that a communication from the Patent Office was not received, this is predicated on the fact that applicant was able to receive mail at the correspondence address. MPEP 711.03(c) also requires applicant to show that "due care was taken to adhere to the requirement for prompt notification in each concerned application for the change of address". Since applicant was apparently not able to receive mail at the address of record, and the Notice mailed August 26, 2003 was correctly mailed to the address of record, the procedure outlined in 1156 OG 53 is not available to applicant.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (**1**) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (**2**) the petition fee required by 37 CFR 1.17(m); and (**3**) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is $110. The fee for a petition under the unintentional standard is $1,330. If applicants have, or can qualify as a "small entity" and do so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

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

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

By Hand: Crystal Plaza 4, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

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."

A copy of this decision is being mailed to the address appearing in the petition as a courtesy. Applicant is required to file a proper request for a change of address if he wishes to receive future correspondence at this address.

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

KJD/mjz: 6/7/04

CC: Allen D. Brufsky, P.A.
475 Galleon Drive
Naples, FL 34102

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No: __

ALLEN D. BRUFSKY, P.A.
600 5TH AVENUE SOUTH
SUITE 205
NAPLES FL 34102

COPY MAILED
JUN 19 2006
OFFICE OF PETITIONS

In re Application of	:	
Prizzi	:	DECISION
Application No.: 09/993,820	:	
Filing Date: 16 November, 2001	:	
Attorney Docket No. Prizzi-2	:	

This is a decision on the series of petition filed on 30 June, 2004, on 7 and 11 March, 2005, and on 17 March, 2006, to withdraw the holding of abandonment and considered under 37 C.F.R. §1.181, alternatively, to revive the application under 37 C.F.R. §1.137(b) as having as abandoned due to unintentional delay–however, the petitions in question have only been received from the Technology Center and into the Office of Petitions at this writing.

NOTICE:

Petitioner has submitted Notice(s) of Change of Address on 30 June, 2004 (the June 2004 Notice), and on 11 March, 2005 (the March 2005 Notice), and both Notices expressly associated with Customer No. 32,575.

The only address ever associated by Petitioner with Customer No. 32,575 is the Naples, Florida, address (the Naples address) set forth above.

While it appears from the March 2005 Notice that Petitioner may expect the Office to direct communications to the mailing address of Christopher & Weisberg, PA (i.e., 200 East Las Olas Boulevard/Ste. 2040, Fort Lauderdale, FL 33301 (the Ft. Lauderdale address)), Petitioner never has acted to direct the Office to change the address associated with Customer No. 32,575 from the Naples address to the Ft. Lauderdale address.

Thus, while a copy of this decision is being mailed as a courtesy to the Ft. Lauderdale address, until Petitioner formally Notices the Office to change the address associated with Customer No. 32,575 to the Ft. Lauderdale address, all communications will, under Rule, be directed to the Naples address.

For the reasons set forth below the petition as considered under 37 C.F.R. §1.181 is **DISMISSED**, and the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 7 May, 2003, with reply due absent extension of time on or before 7 August, 2003;

- Petitioner filed a reply on 7 August, 2003, however, it was deemed not proper and a Notice of Non-Compliant Amendment was mailed on 26 August, 2003 (the August 2003 Notice), to which a reply was due, absent extension of time, on or before 26 September, 2003–but in no case after 26 November, 2003;

- the Office mailed the Notice of Abandonment on 9 March, 2004 (the March 2004 Notice);

- on 20 April, 2004, Petitioner first sought withdrawal of the holding of Abandonment, and filed therewith a reply in the form of an amendment, averring at that time non-receipt of the August 2003 and March 2004 Notices, which request was dismissed on 17 June, 2004, *inter alia*, because Petitioner clearly had changed addresses and failed to Notice the Office of the change;

- Petitioner renewed his petition on 30 June, 2004, and added a petition to revive the application as abandoned due to unintentional delay, and included therewith a reply in the form of an amendment and/or pointed to a previously filed and unaddressed amendment of April 2004–**notably, Petitioner averred that his signed papers previously submitted indicated a customer number associated with a proper mailing address, and, thus, Petitioner acknowledged therein that he had ignored the requirement under the Rules of Practice that every paper, including a Notice of Change of Address, be a separate paper (see: 37 C.F.R. §1.4(c));**

- Petitioner renewed his petitions on 7 and 11 March, 2005, and on 17 March, 2006, to withdraw the holding of abandonment or alternatively to revive under 37 C.F.R.

§1.137(b), again with the previously unaddressed amendment of April 2004 as a reply, and further filed the equivalent of Status Inquiries on 29 December, 2005, and 6 April, 2006;

- out of an abundance of caution, Petitioners always are reminded that each request to the Office must be filed as a separate paper (see: 37 C.F.R. §1.4(c)), and 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]

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

Specifically, the regulations at 37 C.F.R. §10.18 provide:

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

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

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

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

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

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

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

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

(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(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]

It appears that with the petition and fee, the reply in the form of the amendment filed in April 2004 and previously and heretofore unaddressed by the Office, and the statement of unintentional delay, Petitioner has satisfied the 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).[2]

The regulations at 37 C.F.R. §1.137(a) and (b) set forth the requirements for a petitioner to revive a previously unavoidably or unintentionally, respectively, abandoned application under this congressional grant of authority. The language of 35 U.S.C. §133 and 37 C.F.R. §1.137(a) is clear, unambiguous, and without qualification: the delay in tendering the reply to the outstanding Office action, as well as filing the first petition seeking revival, must have been unavoidable for the reply now to be accepted on petition.[3]

Delays in responding properly raise the question whether delays are unavoidable.[4] Where there is a question whether the delay was unavoidable, Petitioners must meet the burden of establishing that the delay was unavoidable within the meaning of 35 U.S.C. §133 and 37 C.F.R. §1.137(a).[5] And the Petitioner must be diligent in attending to the matter.[6] Failure to do so does not constitute the care required under Pratt, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

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[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure; Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

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

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[8]

Further, the commentary at MPEP §711.03(c) provides:

* * *

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

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Thus, as of this writing Petitioner appears not to have satisfied the showing requirements described above–particularly in light of Petitioner's failure to Notice the Office properly as to his Change of Address in 2003.

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The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995. Petitioner may review the commentary set forth at MPEP §711.03(c) and the language at 37 C.F.R. §1.137(b) for guidance.

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply, showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

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CONCLUSION

Because Petitioner has not satisfied the burdens set forth in Delgar v. Schulyer, the petition as considered under 37 C.F.R. §1.181 is **dismissed**; however, because Petitioner appears to have satisfied the regulatory requirements, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to the Examiner in Technology Center 3600 for further processing in due course.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

March 16, 2005

W. Brinton Yorks, Jr.
Philips Electronics
22100 Bothell Everett Highway
Bothell, WA 98041-3003

In re Application of:
Daniel J. Powers
Serial No: 09/993,841 On Petition
Filing Date: November 5, 2001
For: **CARTRIDGE HAVING A POWER SOURCE AND ELECTRODE PAD, DEFIBRILLATOR HAVING RECHARGEABLE BATTERY, DEFIBRILLATOR SYSTEM HAVING ONLY ONE REPLACEABLE COMPONENT, AND RELATED METHODS**

In response to the petitions received on February 3 and December 15, 2004, to withdraw the holding of abandonmen in the above application.

The petition is Granted.

The above-identified application became abandoned for failure to reply with the meaning of 37 C.D.R 1.113 in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed December 12, 2001. Which set forth a shortened statutory period for reply of two months. Accordingly, the above-identified application became abandoned February 13, 2002. The notice of abandonment was mailed on November 6, 2003.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts of Nonprovisional Application Papers on April 17, 2002 with the wrong serial number.

The application was abandoned in error. The office regrets any inconvenience this may have caused the client.

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

Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

March 16, 2005

W. Brinton Yorks, Jr.
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22100 Bothell Everett Highway
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March 16, 2005

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COMMISSIONER FOR PATENTS
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Paper No. 11

Ericsson
6300 Legacy Drive
M/S EVR C-11
Plano, Texas 75024

MAILED

FEB 22 2005

Technology Center 2100

In re Application of: Nordstrom, et al.	)	
Application No. 09/993, 843	)	
Attorney Docket No. 031941-096	)	**DECISION ON PETITION TO**
Filed: November 5, 2001	)	**WITHDRAW HOLDING OF**
For: TELECOMMUNICATIONS	)	**ABANDONMENT UNDER 37 CFR**
NETWORK RESOURCE HANDLING	)	**§1.181**
ARRANGEMENT AND METHOD	)	

This is a decision in response to the petition under 37 CFR § 1.181 requesting the withdrawal of the holding of abandonment filed November 15, 2004.

The petition is **GRANTED**.

This application was held abandoned for failure to file a timely response to the Office action mailed April 30, 2004. A Notice of Abandonment was mailed on October 29, 2004.

In support of the petition, Applicant asserts that an Associated Power of Attorney was submitted to the U.S. Patent and Trademark Office (USPTO) by facsimile on September 26, 2003. Petitioner supplies a copy of the Associate Power of Attorney facsimile transmitted to the USPTO on September 26, 2004 and a copy of the Auto-Reply Facsimile Transmission to confirm of the facsimile transmission received by the USPTO.

The relevant portion of MPEP § 403.01 states:

> Where the attorneys bear relation of principal attorney and associate attorney, the correspondence will be had with the associate attorney unless the principal attorney directs otherwise. Ex parte Eggan, 1911 C.D. 213, 172 O.G. 1091 (Comm'r Pat. 1911). The associate attorney may specify or change the correspondence address to which communications about the application are to be directed.

The associate power of attorney becomes effective on the date of RECEIPT in the Office (not on the date of ACCEPTANCE).

For the above, the petition is **GRANTED**. The abandonment is **WITHDRAWN**.

The application file is being forwarded to the Technology Center support staff. The Office action of April 30, 2004 will be remailed to the address noted above with the three month Shortened Statutory Period restarted to run from the date of the remailing.

Vincent N. Trans
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and
Information Security
571-272-3613

OIPE JC76
JAN 3 1 2005
PATENT & TRADEMARK OFFICE

3/6/04
APPROVED

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	09/993,845
Filing Date	November 16, 2001
First Named Inventor	Michael F. Juras
Art Unit	2163
Examiner Name	Unknown
Attorney Docket Number	JMF-102-B

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

- [x] all the attorneys/agents of record.
- [ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- [ ] the attorneys/agents associated with Customer Number

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

The reasons for this request are: The client is indebted to us for a substantial amount of money; has not been making timely payments; we provided client with a copy of his entire file; there are no outstanding Office Actions.

CORRESPONDENCE ADDRESS

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

[ ] The address associated with Customer Number:

OR

[x] Firm or Individual Name	Michael Francis Juras				
Address	1990 Hillwood Court				
City	Bloomfield Hills	State	MI	Zip	48304
Country	United States				
Telephone	248-645-5616	Fax	248-594-9231		
Signature					
Name	Andrew R. Basile, Sr.	Registration No.	24,753		
Date	1/27/05	Telephone No.	248-649-3333		

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.

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Paper No. 10

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

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FEB 27 2004

OFFICE OF PETITIONS

In re Application of :
Vadim R. Viviani, et al. :
Application No. 09/993,874 :
Filed: November 14, 2003 :
Attorney Docket No. SAEG150.01CP1C1 :

ON PETITION

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

The petition is **GRANTED.**

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed December 13, 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 14, 2003.

The Revocation of Power of Attorney and Change of Correspondence Address has been accepted and recorded.

Receipt is acknowledged of the Information Disclosure Statement filed February 17, 2004, with the instant petition.

The application file is being forwarded to Technology Center 1600, Art Unit 1652 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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United States Patent and Trademark Office
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FOURTEENTH FLOOR
IRVINE, CA 92614

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APR 20 2005

OFFICE OF PETITIONS

In re Application of	:
Vadim R. Viviani et al	:
Application No. 09/993,874	: DECISION ON PETITION
Filed: November 14, 2001	: UNDER 37 CFR 1.55(c)
Attorney Docket No. SAEG150.01CP1C1	:

This is a decision on the petition under 37 CFR 1.55(c), filed March 21, 2005, requesting acceptance of an unintentionally delayed claim under 35 U.S.C. § 119 (a) - (d) for benefit of the filing date of the following foreign application number: Italian Application No. IT1998000000195, filed September 2, 1998.

The petition is **DISMISSED** as moot for the reason stated below.

Petitioner has filed the instant petition to accept a late claim for foreign priority on the ground that the foreign Italian application number originally provided was incorrect.

The instant petition is unnecessary since the claim for priority was timely made in the oath or declaration as required by 37 CFR 1.63(c)(2) and within the time period provided by 37 CFR 1.55(a)(1). No petition and surcharge are required where an applicant provides the incorrect application number of the foreign application, since the Office was able to properly schedule the application for publication with the filing date given, thereby not affecting the prior art date under 35 U.S.C. § 102(e). However, if on the other hand, the wrong application filing date was provided, then a petition and surcharge would be required.[1] Accordingly, petitioner should review the Italian priority document to ensure that the correct filing date was provided. If it is discovered that the correct filing date was not provided within the time period set out in 37 CFR 1.55(a)(1)(i), then a petition and surcharge would be required as a requisite for accepting the foreign claim for priority under 37 CFR 1.55(c).

In view of the above, the instant petition is dismissed as involving a moot issue. Consequently, the $1,370 surcharge submitted will be credited to petitioner's deposit account in due course.

---

[1] *Note* Q & A Nos. CX11 and CX12 of the American Inventor's Protection Act of 1999 on the USPTO.gov website.

Receipt is acknowledged of papers submitted under 35 U.S.C. § 119. The priority papers are accepted as timely filed and have been placed of record in the file.

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

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

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

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

Any questions concerning this matter may be directed to the Wan Laymon at (571) 272-3220.

Frances Hicks

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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CANTOR COLBURN, LLP
20 CHURCH STREET
22ND FLOOR
HARTFORD CT 06103

MAILED

JUN 2 1 2010

OFFICE OF PETITIONS

In re Patent No. 7,447,312 :
Issue Date: November 4, 2008 :
Application No. 09/993,894 : NOTICE
Filed: November 23, 2001 :
Attorney Docket No. NIV0009US2 :

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 **NOT ACCEPTED**.

The fee deficiency cannot be accepted because a proper itemization has not been submitted, as required by 37 CFR 1.28(C) (ii) which states:

(2) Payment of deficiency owed. The deficiency owed, resulting from the previous erroneous payment of small entity fees, must be paid.

(ii) *Itemization of the deficiency payment.* An itemization of the total deficiency payment is required. The itemization must include the following information:

(A) Each particular type of fee that was erroneously paid as a small entity, (e.g., basic statutory filing fee, two-month extension of time fee) along with the current fee amount for non-small entity;

(B) The small entity fee actually paid, and when. This will permit the Office to differentiate, for example, between two one-month extension of time fees erroneously paid as a small entity but on different dates;

(C) The deficiency owed amount (for each fee erroneously paid); and

(D) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts set forth in paragraph (c)(2)(ii)(C) of this section.

The deficiency payment submitted April 26, 2010, is acknowledged, however, does not include a proper itemization of the issue fee, as indicated above.

This itemization must be provided within one (1) month of the mail date of this decision to avoid the return of the deficiency payment. See 37 CFR 1.28 (c)(3). No extension of this 1-month time limit will be granted under 37 CFR 1.136(a).

Inquiries related to this communication should be directed to Diane C. Goodwyn at (571) 272-6735.

Thurman K. Page

Thurman K. Page
Petitions Examiner
Office of Petitions

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390 NORTH ORANGE AVENUE
SUITE 2500
ORLANDO, FL 32801

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SEP 25 2006

OFFICE OF PETITIONS

In re Application of	:	
Biddix, et al.	:	DECISION ON PETITION
Application No. 09/993,943	:	
Filed: November 6, 2001	:	
Docket No.: 071963-001	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed May 8, 2006, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned June 23, 2004 for failure to timely reply to the non-final Office action mailed March 22, 2004. The non-final Office action set a three (3) month shortened statutory period of time for reply. No extensions of time in accordance with 37 C.F.R. § 1.136 were timely requested. Notice of Abandonment was mailed January 19, 2006.

A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 C.F.R. § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee set forth in 37 C.F.R. § 1.20(d)) required pursuant to 37 C.F.R. § 1.137(c).

The 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 in accepting the statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. 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 instant petition has been reviewed and found in compliance with the provisions of 37 C.F.R. § 1.137(b). Accordingly, the failure to timely submit a proper reply to the non-final Office action is accepted as having been unintentionally delayed.

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

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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wk

Mailed: 8/23/05

In re application of	:	
Karel Van Den Berg	:	DECISION ON
Serial No. 09/993,961	:	PETITION
Filed: November 27, 2001	:	
For: A Method and Apparatus For Cleaning A Milk Line System:		

This is a decision on the petition filed on May 09, 2005. The petition requests to vacate or expunge the notice of Non-Compliant amendment dated September 15, 2004 and the paper dated February 28, 2005 entitled "Failure to Acceptably Respond to Notice of Non-Compliant Amendment.

DECISION

The Instant PETITION is accepted as a petition under 37 CFR 1.181.

Applicant filed a response on January 18, 2005 to the notice of non-compliant amendment dated September 15, 2004. The Office on February 28, 2005 mailed to the applicant a "Failure to Acceptably Respond to Notice of Non-Compliant Amendment". No new time period for reply was provided to the applicant. Applicant asserts the file was not docketed because his secretary was unclear as to the deadlines for docketing.

The Office will grant a petition to restart the previously set period for reply to an Office action to run from the date of receipt of the Office action at the correspondence address when the following criteria are met:

(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.

Applicant has not provided evidence that meets the criteria stated above nor sufficient reasons as to why the notices of non-compliant should be vacated or expunged..

The petition is **DENIED**.

The application is abandoned.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Penrose Lucas Albright
Mason, Mason & Albright
2306 South Eads Street
Arlington, VA 22202

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MASON, MASON & ALBRIGHT
2306 SOUTH EADS STREET
P O BOX 2246
ARLINGTON, VA 22202

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JUL 31 2006
OFFICE OF PETITIONS

In re Application of	:	
Karel van den Berg	:	
Application No. 09/993,961	:	DECISION GRANTING PETITION
Filed: November 27, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 8553/114a	:	

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to reply to the Notice of Non-Compliant Amendment (37 CFR 1.121), mailed September 15, 2004, which set a one month period for reply, with extensions of time under 37 CFR 1.136(a) being available. A reply thereto was received on January 18, 2005, along with a three month extension of time fee; however, the reply was still found to be non-compliant and a second Notice of Non-compliant Amendment was mailed on February 28, 2005, which stated that the period for reply remained as set in the Notice of September 15, 2004. No timely reply having been received, the date of abandonment of this application is January 19, 2005. A Notice of Abandonment was mailed on June 17, 2005.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) a reply to the Notice of Non-Compliant Amendment (mailed September 15, 2004 and February 28, 2005); (2) the $750 petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notices of September 15, 2004 and February 28, 2005 is accepted as having been unintentionally delayed.[1]

---

[1] After revival of an application, the examiner may, upon a more detailed review, determine that the reply is lacking in some respect. In this limited situation, the examiner should send out a letter giving a 1-month shortened statutory period under 37 CFR 1.135(c) for correction of the error or omission. Extensions of time under 37 CFR 1.136(a) are permitted.

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

This matter is being referred to Technology Center AU 1746 for appropriate action in the normal course of business on the reply received with the petition.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

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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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MAY 27 2008

In re Application of	:	
Karel Van Den BERG	:	
Application No. 09/993,961	:	DECISION ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. **04132.0108.CPUS01**	:	

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**.

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 April 16, 2007, 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 June 19, 2007. *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 an amendment; (2) the petition fee of $1,540.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the Notice of Appeal filed April 16, 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.

The power of attorney filed April 25, 2008 has been accepted and made of record.

Telephone inquiries concerning this decision should be directed to Michelle R. Eason at (571) 272-4231.

The application file is being referred to Technology Center AU 1792 for appropriate action on the concurrently filed amendment.

Michelle R. Eason
Paralegal Specialist
Office of Petitions

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FALLS CHURCH VA 22042-2924

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SEP 18 2009

OFFICE OF PETITIONS

In re Patent No. **7,473,323** :
Issue Date: January 6, 2009 :
Application No. 09/993,961 : NOTICE UNDER 37 CFR 1.28(C)
Filed: November 27, 2001 :
Attorney Docket No. **04132.0108.CPUS01** :

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 Monica A. Graves at (571) 272-7253.

/Monica A. Graves/
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)
7045543	2006-05-16	09993976	2001-11-05	99-297

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	/Kevin E. Noonan/	Date (YYYY-MM-DD)	2010-07-13
Name	Kevin E. Noonan	Registration Number	35303

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

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

In re Patent No. 7045543
Issue Date: May 16,2006
Application No. 09993976
Filed: November 5,2001
Attorney Docket No. 99,297

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

This is a decision on the electronic petition, filed July 13,2010 ,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 13,2010 . 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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OFFICE OF PETITIONS

STMICROELECTRONICS, INC.
MAIL STATION 2346
1310 ELECTRONICS DRIVE
CARROLLTON, TX 75006

In re Application of	:	
Heydari, et al.	:	
Application No. 09/994,009	:	DECISION ON PETITION
Filed: November 5, 2001	:	
Attorney Docket No. 01-S-023(1678-39)	:	

This is a decision on the petition under 37 CFR 1.137(b), filed August 24, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-cited application became abandoned for failure to file a timely and proper reply to the final Office action mailed February 7, 2005, which set a three (3) month shortened statutory period for reply. A proper response was not received within the allowable period and the application became abandoned on May 8, 2005.

The Notice of Appeal, filed August 24, 2005, has been entered and made of record. Accordingly, 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.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary

The application file is being forwarded to Technology Center 2600, GAU 2651 for further processing.

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

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:

P.G. Scott Born
155 108th Avenue, NE Suite 350
Bellevue, WA 98004-5973

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ALEXANDRIA, VA 22313-1450
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Paper No. None

Sunday Yokubaitis
Crosby, Heafey, Roach & May
P.O. Box 7936
San Francisco CA 94120-7936

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OFFICE OF PETITIONS

In re Application of
Toru Tanikawa et al.
Application No. 09/994,010
Filed: November 16, 2001
Attorney Docket No. 23700.00110
Title: PIEZOELECTRIC ACTUATOR AND ITS MANUFACTURING METHOD AND INK-JET PRINTHEAD

DECISION GRANTING
PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed August 24, 2005, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R §1.113 in a timely manner to the final Office action mailed January 21, 2005, which set a shortened statutory period for reply of three (3) months. An amendment was received on July 15, 2005 along with a three-month extension of time, and an advisory action was sent on August 1, 2005. No further responses were received. Accordingly, the above-identified application became abandoned on July 22, 2005.

With the present petition, petitioner has filed the petition fee, an amendment, a Request for Continued Examination (RCE) under 37 C.F.R. §1.114 as well as the associated fee and the proper statement of unintentional delay. The RCE has been accepted as the required reply under

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.

37 C.F.R. §1.137(b)(1). The amendment submitted with the present petition shall serve as the required submission.

As such, the petition is **GRANTED**.

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/122) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/122), may be found at http://www.uspto.gov/web/forms/sb0122.pdf.

Paul Shanoski

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

cc: JOHNSON,DOYLE
Reed Smith Crosby Heafey LLP
2 Embarcadero Center Ste 2000
San Francisco, CA 94111

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

DATE : 2-9-05 **Paper No.:** 2-9-05

TO SPE OF : ART UNIT 2851

SUBJECT : Request for Certificate of Correction on Patent No.: 6,784,972

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.

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:

Allan Mathews
SPE

2851
Art Unit

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT NO. : 6,784,972 B2 Page 1 of 1

DATED: August 31, 2004

INVENTOR(S): Yoshitomo NAGAHASHI et al.

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

Approved AM 2-9-05

First page, left column, after "(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 77 days.", delete "This patent is subject to a terminal disclaimer.".

First page, the fourth document under FOREIGN PATENT DOCUMENTS, delete "5-318538" and insert --6-318538--.

Mailing address of sender:

Patent No. 6,784,972 B2

Customer Number

22850

Tel. (703) 413-3000
Fax. (703) 413-2220
(OSMMN 03/02)

No. of add'l copies @ .30 per page

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SCHERING-PLOUGH CORPORATION
PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH, NJ 07033-0530

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OFFICE OF PETITIONS

In re Patent No. 6,984,728 :
Issued: January 10, 2006 :
Application No. 09/994,064 : PATENT TERM ADJUSTMENT
Filed: November 6, 2001 :
Atty. Dkt. No.: SY01106KQB :

This is a decision on the "REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705(b) OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b) INDICATED IN THE NOTICE OF ALLOWANCE," filed January 18, 2006. This matter is being properly treated under 37 CFR 1.705(d) as a timely filed application for patent term adjustment.

The application for patent term adjustment ("PTA") under 37 C.F.R. § 1.705(d) is **DISMISSED**.

The above-identified application matured into U.S. Patent No. 6,984,728 on January 10, 2006. The instant request for reconsideration was timely filed January 18, 2006 in accordance with 37 C.F.R. § 1.705(d). The patent issued with a PTA of 361 days. Applicant argues that because the reduction of five days under 37 CFR 1.704(b) overlaps with the reduction of 120 days under 37 CFR 1.704(c)(10), the overall adjustment of 494 days was improperly reduced five days.

A review of the application history reveals that in accordance with 37 C.F.R. §§ 1.702(a)(4) and 1.703(a)(6), an adjustment of 494 days can be attributed to the Office. The adjustment of 494 days was properly reduced 133 days resulting an overall adjustment of 361 days as the actual patent indicated.

The 8 day reduction under 37 CFR 1.704(b) is uncontested.

The 5 day reduction under 37 CFR 1.704(b) commenced April 29, 2004, the day after the date that is three months after the date that the Notice of Allowance was mailed, and ended May 3, 2004, the date the issue fee was received.

In according a period of reduction of 120 days pursuant to 37 CFR 1.704(c)(10), the days of overlap were considered. The period of reduction is based on a day-to-day accounting. In this instances, the period of reduction, pursuant to 37, CFR 1.704(c)(10) commenced on April 15, 2004, the date of filing of the amendment, and ended on February 7, 2005, the date of mailing of the Office's response. Not counting the overlap days of April 29, 2004 to May 3, 2004 for the period of reduction under 1.704(b), the period runs from April 15, 2004 to April 28, 2004 and from May 4, 2004 to February 7, 2005. This period, not counting the 5 days, adds up to 294 days. In view thereof, the lesser period of 120 days was entered.

It is concluded that the patent term adjustment of 361 days indicated on the patent is correct.

Any request for reconsideration of this decision must be submitted within two (2) months of the mail date indicated above. Extensions of time under 37 CFR 1.136 are not permitted.

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

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

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PATENT DEPARTMENT (K-6-1, 1990)
2000 GALLOPING HILL ROAD
KENILWORTH NJ 07033-0530

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OFFICE OF PETITIONS

In re Patent No.: 6,984,728	:
Issue Date: January 10, 2006	:
Application No. 09/994,064	:
Filed: November 6, 2001	: ON PETITION
For: RECOMBINANT INFECTIOUS	:
LARYNGOTRACHEITIS VIRUS AND USES	:
THEREOF	:

This is a decision on the petition filed February 19, 2004, styled as a "petition for expungement of information under 37 CFR 1.59", which is properly treated as a petition under 37 CFR 1.182 requesting the terminal disclaimer filed July 8, 2003 be nullified.

The petition is **dismissed.**

While it is recognized that the instant petition was filed prior to issuance, it was unfortunately not brought to the attention of an appropriately empowered deciding official until after the patent issued. As explained in MPEP 1490, subsection B, once the patent has issued, the USPTO will not nullify the effect of a recorded terminal disclaimer.

It should be noted that captioning the petition as one under § 1.59 appears to have caused or at least contributed to the delay in this case as petitions under this regulation can be decided by the Technology Center, and as such it was not brought to the attention of this office in time to avert issuance with the recorded disclaimer in effect. As explained in MPEP 1490, petitions seeking to nullify a terminal disclaimer are to be filed under 37 CFR 1.182, (and not § 1.59) and as such are routed to and can only be decided by, the Office of Petitions. See MPEP 1002.02(b) ¶ 11.

Telephone inquiries related to this decision should be addressed to the undersigned at (571) 272-3217.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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P.O. Box 1450
Alexandria, VA 22313-1450
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JOHN E. CURTIN, ESQ.
TROUTMAN SANDERS LLP
1660 INTERNATIONAL DRIVE
SUITE 600
MCLEAN, VA 22102

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APR 2 8 2010

OFFICE OF PETITIONS

In re Application of	:	
Herrmann et al.	:	
Application No. 09/994,163	:	DECISION ON PETITION
Filed: November 26, 2001	:	
Attorney Docket No. Herrmann 1-1-3	:	

This is a decision on the petition, filed October 23, 2009, 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. Alternatively, petitioner also seeks a petition under the unintentional provisions of 37 CFR 1.137(b).

The petition under 1.181 is **DISMISSED**.

This application was held abandoned for failure to reply to the Non-Final Office action mailed September 6, 2005, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 7, 2005.

Petitioner asserts that the Office action dated September 5, 2005, was not received.

A review of the written record does not indicate an irregularity in the mailing of the Notice of September 6, 2005. The change of correspondence address submitted on July 22, 2005 was not processed because it was not signed by an attorney or agent of record. *See* MPEP 405. Accordingly, the petition to withdraw holding of abandonment cannot be accepted.

The petition under 1.137(b) 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 an amendment , (2) the petition fee of $1,620, 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.

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. There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. 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.

The file does not indicate that a proper 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 referred to Technology Center 2616 for further examination on the merits.

Telephone inquiries concerning this decision should be directed to Alicia Kelley at (571) 272-6059.

Carl Friedman
Petitions Examiner
Office of Petitions

cc: JOHN CURTIN
CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC
P.O. BOX 1995
VIENNA, VA 22183

UNITED STATES PATENT AND TRADEMARK OFFICE

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

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OFFICE OF PETITIONS

In re Application of	:	
Castelli et al.	:	
Application No. 09/994,165	:	ON PETITION
Filed: November 6, 2001	:	
Attorney Docket No.	:	
ROC025	:	

This is a decision on the petitions under 37 CFR §§ 1.78(a)(3), filed April 22, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of the prior-filed applications set forth in the concurrently filed amendment.

The petitions are **dismissed**.

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

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

The instant petition does not comply with item **(1)** above.

As to item (**1**), a reference to add the above-noted, prior-filed applications on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Further as to item (**1**), Applicant has failed to state the relationship of the PCT application to intermediate application No. 09/293,111, since that application was filed as a bypass application under 35 U.S.C. § 111(a), and not as a 35 U.S.C. § 371 filing. 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. See MPEP Section 201.11, Rev. 2, May 2004, Reference to Prior Application. The amendment filed June 10, 2005 fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, and stating the relationship of the PCT application to intermediate application No. 09/293,111, along with a renewed petition under 37 CFR 1.78(a)(3), is required.

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

By mail: Mail Stop 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

[1] *Note* 37 CFR 1.121

Any questions concerning this matter may be directed to Attorney Derek L. Woods at (571) 272-3232.

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

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SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Siegfried Bocionek, et. al.
Application No. 09/994,184
Filed: November 26, 2001
Attorney Docket No. P01,0415

This is a decision on the petition under 37 CFR 1.137(b), filed October 22, 2007, to revive the above-identified application.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of an appeal brief with the $500 fee; (2) the petition fee of $1,540; and (3) a proper statement of unintentional delay. Therefore, the petition is **GRANTED**.

The Office acknowledges receipt of a Terminal Disclaimer under 37 CFR 1.321 and $130 fee filed on October 22, 2007.

This application file is being referred to Technology Center Art Unit 2179 for further processing in accordance with this decision.

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

Andrea Smith
Petitions Examiner
Office of Petitions

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MIDDLETOWN NJ 07748

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OFFICE OF PETITIONS

In re Application of
John H. Norris et al.
Application No. 09/994,200
Filed: November 26, 2001
Attorney Docket No. 109610

ON PETITION

This is a decision on the petition filed March 18, 2005 under 37 CFR 1.137(b),[1] to revive the above-identified application.

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

This application became abandoned January 19, 2005 for failure to timely pay the issue fee on or before January 8, 2005. Accordingly, a Notice of Abandonment was mailed March 3, 2005.

The issue fee, petition fee and publication fee have been applied. All other requirements of 37 CFR 1.137(b) having now been met, this application file is being forwarded to the Publishing Division to be processed into a patent.

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

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

---

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

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

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

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

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

07-02-02 14D T.D MP

Express Mail Label No.: EL947114889US
Date of Deposit: June 28, 2002

Attorney Docket No.: 21402-015 CIP (Cura 315 CIP) $

Bot-sech

OIPE JC106
JUN 28 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Richard A. Shimkets		
SERIAL NUMBER:	09/994,228	EXAMINER:	Not Yet Assigned
FILING DATE:	November 27, 2001	ART UNIT:	1645
FOR:	NUCLEIC ACIDS CONTAINING SINGLE NUCLEOTIDE POLYMORPHISMS AND METHODS OF USE THEREOF		

BOX Missing Parts
Commissioner for Patents and Trademarks
Washington, D.C. 20231

TRANSMITTAL

In response to the Notice to File Missing Parts mailed on MARCH 28, 2002, attached please find:

1. Response to Notice to File Missing Parts (1 pg.);
2. A copy of the Notice to File Missing Parts (2 pgs);
3. Declaration and Combined Power of Attorney (3 pgs);
4. Preliminary Amendment (2 pgs);
5. Petition for Extension of Time (1 pg);
6. Initial Sequence Listing, paper copy (18 pgs);
7. Initial Sequence Listing in Computer Readable Form (1 disk);
8. Statement in Support of Computer Readable Form Submission under 37 C.F.R. § 1.821(f) (1 pg.);
9. Check No. 13228 in the amount of $130.00 to cover surcharge;
10. Check No. 13229 in the amount of $110.00 to cover extension fee; and,
11. Return Postcard.

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned collect at telephone (617) 542-6000.

The Commissioner is hereby authorized to charge any fees which may be required to Deposit Account No. 50-0311 (Reference No. 21402-015 (CIP Cura 315 CIP)).

Respectfully submitted,

Ivor R. Elrifi, Reg. No.: 39,529
Cynthia A. Kozakiewicz, Reg. No.: 42,764
Attorneys for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Dated: June 28, 2002

30623
PATENT TRADEMARK OFFICE

TRA 1684145v1

Express Mail Label No.: EL947114889US
Date of Deposit: June 28, 2002

Attorney Docket No.: 21402-015 CIP (Cura 315 CIP)

OIPE JC106
JUN 2 8 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Richard A. Shimkets		
SERIAL NUMBER:	09/994,228	EXAMINER:	Not Yet Assigned
FILING DATE:	November 27, 2001	ART UNIT:	1645
FOR:	NUCLEIC ACIDS CONTAINING SINGLE NUCLEOTIDE POLYMORPHISMS AND METHODS OF USE THEREOF		

BOX Missing Parts
Commissioner for Patents and Trademarks
Washington, D.C. 20231

RESPONSE TO NOTICE TO FILE MISSING PARTS

In response to the Notice To File Missing Parts of Nonprovisional Application mailed March 28, 2002, Applicants submit herein an executed Combined Declaration and Power of Attorney, payment of the surcharge of $130.00 (#13228) as set forth in 37 C.F.R. §1.16(e), a copy of the Notice to File Missing Parts of Nonprovisional Application, Petition for One-Month Extension of Time, a check in the amount of $110.00 (#13229) to cover the Petition fee, a Preliminary Amendment, Statement in Support of CRF and Electronic and paper copy of sequence listing. This response is due on or before June 28, 2002, with the extension.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at 617-542-6000, Boston, Massachusetts.

The Commissioner is hereby authorized to charge any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Attorney Reference No. 21402-015 CIP (Cura 315 CIP). A duplicate copy of this transmittal letter is enclosed herewith.

Respectfully submitted,

Ivor R. Elrifi, Reg. No.: 39,529
Cynthia A. Kozakiewicz, Reg. No.: 42,764
Attorneys for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Dated: June 28, 2002

TRA 1684120v1

#8

Express Mail Label No.: EL947114889US
Date of Deposit: June 28, 2002

Attorney Docket No.: 21402-015 CIP (Cura 315 CIP)

OIPE JC106
JUN 2 8 2002
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Richard A. Shimkets		
SERIAL NUMBER:	09/994,228	EXAMINER:	Not Yet Assigned
FILING DATE:	November 27, 2001	ART UNIT:	1645
FOR:	NUCLEIC ACIDS CONTAINING SINGLE NUCLEOTIDE POLYMORPHISMS AND METHODS OF USE THEREOF		

BOX Missing Parts
Commissioner for Patents and Trademarks
Washington, D.C. 20231

PETITION FOR EXTENSION OF TIME

Pursuant to 37 C.F.R. §1.136(a), applicants hereby petition for a one-month extension of time to respond to the March 28, 2002 Notice to File Missing Parts of Nonprovisional Application in the above-identified application. With the extension, the response is due on or before June 28, 2002.

Please charge any additional fees that may be due, our Deposit Account No. 50-0311 (Reference No. 21402-015 CIP (Cura 315 CIP). A duplicate copy of this Petition is enclosed.

Respectfully submitted,

Ivor R. Elrifi, Reg. No.: 39,529
Cynthia A. Kozakiewicz, Reg. No.: 42,764
Attorneys for Applicants
c/o MINTZ, LEVIN
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Dated: June 28, 2002

TRA 1684141v1

07/09/2002 BABRAHA1 00000087 09994228
01 FC:115 110.00 OP

OIPE JC106
JUN 2 8 2002
PATENT & TRADEMARK OFFICE

UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/994,228	11/27/2001	Richard A. Shimkets	21402-015CIP (Cura 315CIP

CONFIRMATION NO. 9622

FORMALITIES LETTER

OC000000007737626

Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Date Mailed: 03/28/2002

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

07/09/2002 BABRAHA1 00000086 09994228

FILED UNDER 37 CFR 1.53(b)

01 FC:105 130.00 OP

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.**

- This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment directing its entry into the application. Applicant must also provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase PatentIn Software, call (703) 306-2600**
- **For PatentIn Software Program Help, call (703) 306-4119 or e-mail a**

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

MPD 9/23/02

Express Mail Label No.: EL947114040US
Date of Deposit: September 23, 2002

Attorney Docket No. 21402-015 CIP (CURA-315 CIP)

#11 Stmt (152) 10/1/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS:	Richard A. Shimkets		
SERIAL NUMBER:	09/994,228	EXAMINER:	Not Yet Assigned
FILING DATE:	November 27, 2001	ART UNIT:	Not Yet Assigned
FOR:	Nucleic Acids Containing Single Nucleotide Polymorphisms and Methods of Use Thereof		

Box LICENSING AND REVIEW
Commissioner for Patents & Trademarks
Washington, D.C. 20231

RECEIVED
SEP 25 2002
LICENSING & REVIEW

TRANSMITTAL LETTER

Transmitted herewith for filing in the above-referenced patent application are the following documents:

1. Declaration executed by Richard A. Shimkets (2 pages);
2. Copy of Notice of Requirement (1 page); and
3. Return postcard.

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at 617-542-6000, Boston, Massachusetts.

The Declaration under 37 C.F.R. §1.68 is filed in response to the Requirement for Statement under §152 of the Atomic Energy Act. This response is due on or before October 6, 2002. Applicants believe no fees are due with this submission, however, the Commissioner is authorized to charge any additional fees that may be due, or to credit any overpayment, to the undersigned's account, Deposit Account No. 50-0311 Ref. No. 21402-015 CIP (Cura-315 CIP). A duplicate copy of this transmittal letter is enclosed herewith.

Respectfully submitted,

Ivor R. Elrifi, Reg. No. 39,529
Cynthia A. Kozakiewicz, Reg. No. 42,764
Attorneys for Applicant
c/o MINTZ, LEVIN, COHN, FERRIS
GLOVSKY AND POPEO, P.C.
One Financial Center
Boston, Massachusetts 02111
Tel: (617) 542-6000
Fax: (617) 542-2241

Date: September 23, 2002

TRA 1714011v1

MP

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

SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/994,228	11/27/01	SHIMKETS	21402-015 CIP (CURA 315 CIP)

EXAMINER

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

RECEIVED
SEP 12 2002
MINTZ LEVIN, BOSTON
PATENT DOCKET DEPT.

ART UNIT	PAPER NO.
	10

DATE MAILED: - 6 SEP 2002

REQUIREMENT FOR STATEMENT UNDER §152 OF THE ATOMIC ENERGY ACT

The subject matter of this application is considered "useful in the production or utilization of special nuclear material or atomic energy."

No patent for any invention "useful in the production or utilization of special nuclear material or atomic energy" may issue unless the applicant files a statement WITHIN THIRTY DAYS from request thereof by the Commissioner of Patents & Trademarks setting forth the full facts surrounding the making or conception of the invention described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Energy Research and Development Administration or the Department of Energy as required under section 152 of the Atomic Energy Act of 1954, 42 USC §2182.

Applicant is hereby given a period of THIRTY DAYS from the mailing date of this letter to file the required statement under 42 USC §2182. Failure to submit the required statement within the thirty day period will result in ABANDONMENT of the application. The thirty day period is fixed by §2182 of the Act and cannot be extended. Thus, no extension of this period may be obtained under either 37 CFR §1.136(a) or (b).

Joanne P. Hodge
Supervisory Applications Examiner
Special Laws Administration

Done By:	
☐ Data Entry	
☑ Docket Entry	10/6
☐ Docket Cross Off	
☐ Previously Entered	
☐ No Docketing Req.	
☐ ELITE	
☐ Annuities	

Please direct all written communications regarding this matter to:
The Commissioner of Patents & Trademarks
Washington, D.C. 20231
Attention: Licensing & Review
Please direct all telephone calls regarding this matter to:
James Samuels, (703) 305-0239

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)
6553993	2003-04-29	09994238	2001-11-27	MERLYN-1/CIP

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

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

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

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

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

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

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

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

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

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

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

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

○ A sole patentee

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

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

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Leonard Tachner/	Date (YYYY-MM-DD)	2008-03-06
Name	Leonard Tachner	Registration Number	26344

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

Privacy Act Statement

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

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

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

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

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

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

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

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

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

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

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

In re Patent No. 6553993
Issue Date: April 29,2003
Application No. 09994238
Filed: November 27,2001
Attorney Docket No. 20595-86

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

This is a decision on the electronic petition, filed March 6,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 3.5 year maintenance fee for the above-identified patent.

The petition is GRANTED.

The maintenance fee is accepted, and the above-identified patent reinstated as of March 6,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

SETTER OLLILA, LLC
2060 BROADWAY
SUITE 300
BOULDER, CO 80302

COPY MAILED

MAR 03 2005

OFFICE OF PETITIONS

In re Patent No. 6,776,053 :
Issue Date: August 17, 2004 :
Application No. 09/994,251 : ON PETITION
Filed: November 26, 2001 :
Attorney Docket No. 35015/001 :

This is a decision on the petition filed February 4, 2005, which is being treated as a petition under 37 CFR 3.81(b)[1] to correct the assignee's name on the front page of the above-identified patent by way of a Certificate of Correction.

The petition is **granted.**

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3210. Any questions concerning the issuance of the Certificate of Correction should be directed to the Certificates of Correction Branch at (703) 305-8309.

This matter is being forwarded to the Certificates of Correction Branch for issuance of the requested Certificate of Correction.

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

[1] See Official Gazette of June 22, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 6

MAIL

JUN 07 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2600

COOLEY GODWARD, LLP
3000 EL CAMINO REAL
5 PALO ALTO SQUARE
PALO ALTO, CA 94306

In re Application of)
Arvelo, et al.)
Application No. 09/994,260)
Filed: November 26, 2001)
For: POWER CONTROL IN WIRELESS)
COMMUNICATIONS BASED ON
ESTIMATIONS OF PACKET ERROR RATE

DECISION ON REQUEST TO WITHDRAW FROM RECORD

This is a decision on the Request for Withdrawal as attorney or agent and change of address filed on May 14, 2004.

A grantable request to withdraw as attorney/agent of record must:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

The Petition was not signed.

Accordingly, the request is **DENIED**.

All attorneys of record remain of record.

All communications from the Office will continue to be directed to the above-listed address until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the office.

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Carr & Ferrell LLP
2200 Geng Road
Palo Alto, CA 94303

COPY MAILED
NOV 29 2004
OFFICE OF PETITIONS

In re Application of	:	
Tony P. Chiang, et al.	:	
Application No. 09/994,279	:	ON PETITION
Filed: November 26, 2001	:	
Attorney Docket No. PA1688US	:	

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

The petition is **GRANTED**.

It is noted that the reply submitted with the instant petition is titled, "Reply to Final Office Action." However, the application was not finally rejected but is under non-final rejection. In view thereof, the reply will be treated as a reply to a non-final office action.

Additionally, 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 Brian Ogonowsky appearing on the petition shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party in whose behalf he acts. However, if Mr. Ogonowsky desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. A courtesy copy of this decision is being mailed to petitioner. Nevertheless, all future correspondence regarding this application file will be directed solely to the address of record until otherwise instructed.

Moreover, it is not apparent whether the person signing the statement of unintentional delay, namely Mr. Ogonowsky, was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that the delay in replying to the non-final office action under 37 CFR 1.137(b) was intentional, petitioner must notify the Office.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3223.

The application file is being forwarded to Technology Center 2800.

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

cc: Brian Ogonowsky
2635 N. First Street, Suite 223
San Jose, CA 95134

UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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Paper No. 9

FISH & RICHARDSON P.C.
500 Arguello Street, Suite 500
Redwood City, CA 94063

JUN 11 2003

In re Application of	:	
George M. Dougherty	:	DECISION ON REQUEST TO
Application No.: 09/994,280	:	WITHDRAW FROM RECORD
Filed: November 26, 2001	:	
For: THIN FILM MEMBRANE STRUCTURE	:	

This is a decision on the request filed by David J. Goren to withdraw as attorney/agent of record pursuant to 37 C.F.R. § 1.36 filed by facsimile transmission on May 8, 2003. Mr. Goren signed on behalf of all attorneys/agents of record in this application.

The request is **APPROVED** for the withdrawal of all of the attorneys/agents 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/agent of record.

As requested, all future communications from the Office will be directed to the address associated with Customer Number 22434 as presently shown below unless otherwise notified by applicant.

Edward Westin

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

cc: BEYER WEAVER & THOMAS LLP
P.O. Box 778
Berkeley, CA 94704-0778

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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Mailed: SEP 21 2004

spg
Paper Number _____

In re application of
Michael Lamphere et al.
Serial No. 09/994,342
Filed: November 26, 2001
For: TANDEM BLISK ELECTROCHEMICAL MACHINING

DECISION ON PETITION

This is a response to the PETITION UNDER RULE 181(a) TO WITHDRAW NOTICE OF ABANDONMENT, filed May 18, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed May 14, 2004, be withdrawn since the applicant did not receive the Office letter mailed September 25, 2003.

DECISION

The instant request is accepted as a timely petition under 37 C.F.R. 1.181 (no fee), and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.03(c) - NEW PROCEDURE TMOG 1170 O.G. 114). A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Office letter mailed September 25, 2003. The evidence provided includes a statement by the petitioner that the Office letter mailed September 25, 2003 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter mailed September 25, 2003 was not received. Also provided is a copy of the attorney's application docket records where the Office letter mailed September 25, 2003 would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed September 25, 2003 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

FRANCIS L. CONTE, ESQ.
6 PURITAN AVENUE
SWAMPSCOTT MA 01907

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ALEXANDRIA, VA 22313-1450
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MAR 14 2007

OFFICE OF PETITIONS

FRANCIS L. CONTE,, ESQ.
6 PURITAN AVENUE
SWAMPSCOTT MA 01907

In re Application of
Lamphere et al.
Application No. 09/994,342
Filed: November 26, 2001
Atty. Dkt. No: 13DV13913

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(b)" filed September 12, 2006. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **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 FOUR HUNDRED SEVENTY-SIX (476) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 30, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 90 days. The instant application for patent term adjustment was timely filed. Applicants dispute the reduction of 362 days of PTA for applicant delay in allowing the application to go abandoned for failure to respond to the Office Action mailed on September 25, 2003. Applicants state that the application was improperly held abandoned.

The record supports a conclusion that the application was improperly held abandoned. A timely petition to withdraw the holding of abandonment was filed on May 18, 2004. The petition was granted and the holding of abandonment was withdrawn on September 21, 2004. An Office action restarting the time period for reply was mailed on October 13, 2004. Applicants timely responded to the Office action on December 21, 2004 within the meaning of 37 CFR 1.704(b). Accordingly, no reduction is warranted. It is further noted that the petition was filed within two months of the mailing of the Notice of Abandonment. Thus, no reduction is warranted pursuant to 37 CFR 1.704(c)(3).

Applicants' further dispute the reduction of 24 days in connection with the Information Disclosure Statement (IDS) submitted January 14, 2005.

Applicants argue that the IDS should not be considered a failure to engage in reasonable efforts to conclude prosecution for at least 30 days after issuance of the Japanese Office Action. Applicants conclude that the IDS should only have resulted in a 0 day reduction rather than 24 days.

The submission of the IDS on January 14, 2005 is deemed a supplemental reply within the meaning of 37 CFR 1.704(c)(8). Accordingly, the reduction began December 22, 2004, the day after the date the reply to the non-final Office action was filed, and ended January 14, 2005, the date that the supplemental reply (IDS) was filed.

The IDS submitted January 14, 2005 does not comply with the requirements of 37 CFR 1.704(d). However, on instant application for patent term adjustment, applicants have made the 1.704(d) statement. In view thereof, the reduction of 24 days is being removed

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is FOUR HUNDRED SEVENTY-SIX (476) days..

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 of the $200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

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 Charlema R. Grant at (571) 272-3215.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

enc: PAIR screen for U.S. Application No. 09/994,342

Day : Monday
Date: 3/12/2007

PALM INTRANET

Time: 17:04:19

PTA Calculations for Application: 09/994342			
Application Filing Date:	11/26/2001	PTO Delay (PTO):	476
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	386
Post-Issue Petitions:	0	Total PTA (days):	476
PTO Delay Adjustment:	386		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
73	03/06/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	24		
72	03/06/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	362		
62	08/30/2006	MAIL NOTICE OF ALLOWANCE			
61	08/30/2006	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
60	08/30/2006	RECEIPT OF ALL ACKNOWLEDGEMENT LETTERS			
59	06/07/2006	ISSUE REVISION COMPLETED			
58	06/08/2006	NOTICE OF ALLOWABILITY			
57	05/26/2006	MAIL BPAI DECISION ON APPEAL - REVERSED	278		45
56	05/25/2006	BPAI DECISION - EXAMINER REVERSED			
55	02/22/2006	MISCELLANEOUS INCOMING LETTER			
54	02/28/2006	DOCKETING NOTICE MAILED TO APPELLANT			
53	02/28/2006	ASSIGNMENT OF APPEAL NUMBER			
52	01/27/2006	APPEAL AWAITING BPAI DOCKETING			
51	11/04/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
50	10/31/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
49	10/04/2005	MAIL EXAMINER'S ANSWER			
48	09/30/2005	EXAMINER'S ANSWER TO APPEAL BRIEF			
47	08/30/2005	DATE FORWARDED TO EXAMINER			
46	08/22/2005	APPEAL BRIEF FILED			
45	08/22/2005	NOTICE OF APPEAL FILED			
44	08/02/2005	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT			
43	07/29/2005	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			

42	07/19/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
41	05/23/2005	MAIL FINAL REJECTION (PTOL - 326)			
40	05/19/2005	FINAL REJECTION			
39	04/21/2005	DATE FORWARDED TO EXAMINER			
38	03/29/2005	RESPONSE AFTER NON-FINAL ACTION			
37	01/28/2005	MAIL NON-FINAL REJECTION			
36	01/28/2005	NON-FINAL REJECTION			
35	01/14/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		24	32
34	12/22/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
33	12/22/2004	DATE FORWARDED TO EXAMINER			
32	12/21/2004	RESPONSE AFTER NON-FINAL ACTION		362	22
31	10/13/2004	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
30	10/08/2004	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
29	10/12/2004	MAIL NOTICE OF RESCINDED ABANDONMENT			
28	10/08/2004	NOTICE OF RESCINDED ABANDONMENT IN TCS			
27	09/21/2004	PETITION TO REVIVE APPLICATION - GRANTED			
26	05/18/2004	PETITION ENTERED			
25	05/18/2004	WORKFLOW INCOMING PETITION IFW			
24	05/14/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
23	05/13/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
22	09/25/2003	MAIL NON-FINAL REJECTION			
21	09/24/2003	NON-FINAL REJECTION			
20	08/21/2003	DATE FORWARDED TO EXAMINER			
19	08/19/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
18	08/12/2003	MAIL RESTRICTION REQUIREMENT	198		-1
17	08/07/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
16	02/19/2003	CASE DOCKETED TO EXAMINER IN GAU			
15	01/28/2003	CASE DOCKETED TO EXAMINER IN GAU			
14	01/28/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	05/15/2002	APPLICANT RESPONSE RECEIVED			
		REQUEST FOR APPLICANT STATEMENT			

12	04/30/2002	REGARDING POTENTIAL NASA INTEREST (45-DAY LETTER) MAILED			
11	04/03/2002	RECEIPT OF ACKNOWLEDGMENT LETTER			
9	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
8	02/07/2002	CASE DOCKETED TO EXAMINER IN GAU			
7	12/28/2001	APPLICATION DISPATCHED FROM OIPE			
6	12/27/2001	APPLICATION IS NOW COMPLETE			
5	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
4	12/17/2001	REFERRED BY L&R FOR THIRD-LEVEL SECURITY REVIEW. AGENCY REFERRAL LETTER GENERATED			
3	12/13/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	12/04/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/26/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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SPE B. Copenheaver

SPE RESPONSE FOR CERTIFICATE OF CORRECTION 09/994,385

Paper No.: _____

DATE : 8/17/05

TO SPE OF : ART UNIT 1733

SUBJECT : Request for Certificate of Correction on Patent No.: 6814114

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:
all corrections of printer errors - ok to correct AG 8/22/05

BLAINE COPENHEAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1733
Art Unit

PTOL-306 (REV. 7/03)

U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

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Paper No. 12

SILICON VALLEY INTELLECTUAL PROPERTY GROUP
P O BOX 721120
SAN JOSE, CA 95172-1120

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MAY 1 5 2003

OFFICE OF PETITIONS

In re Application of	:	
Victoria I. Pettigrew et al	:	
Application No. 09/994,387	:	DECISION GRANTING PETITION
Filed: November 26, 2001	:	UNDER 37 CFR 1.137(f)
Attorney Docket No. PET1P005	:	

This is a decision on the petition, filed April 7, 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 November 13, 2002. However, the U.S. Patent and Trademark Office was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in a foreign country.

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

A petition under 37 CFR 1.137(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 for appropriate action on the reply received February 24, 2003 to the Office action of January 27, 2003.

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

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UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
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Paper No. 5

W. EDWARD JOHANSEN
11661 SAN VICENTE BOULEVARD
LOS ANGELES, CA 90049

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FEB 27 2003

OFFICE OF PETITIONS

In re Application of	:	
Ronald R. Williams	:	
Application No. 09/994,388	:	ON PETITION
Filed: November 26, 2001	:	
Attorney Docket No. Williams#7	:	

This is a decision on the petition under 37 CFR 1.137(b), filed February 11, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 6, 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 February 7, 2002.

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

The application 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. 12

PAUL S. HUNTER
FOLEY & LARDNER
FIRSTAR CENTER
777 EAST WISCONSIN AVENUE
MILWAUKEE, WI 53202-5367

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SEP 2 9 2003

OFFICE OF PETITIONS

In re Application of	:
Sergey D. Lopatin , et al.	:
Application No. 09/994,395	: DECISION GRANTING PETITION
Filed: November 26, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. 039153-0457 (G1162)	:

This is a decision on the petition, filed September 15, 2003, under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on October 11, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

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

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

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of January 8, 2004 accompanies this decision on petition.

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being returned to Technology Center Art Unit 2811 to await a reply to the nonfinal Office action mailed August 5, 2003. Failure to timely reply will again result in the abandonment of the application.

Sherry D. Brinkley

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

Conferee: Frances M. Hicks fmh
Lead Petitions Examiner

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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JOSEPH E. FUNK
82 CHASE RD
LONDONDERRY NH 03053

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AUG 24 2005

OFFICE OF PETITIONS

In re Application of Monk et al. Application No. 09/994,399 Filed: November 26, 2001 Attorney Docket Number: AT-1 Title of Invention: Validation and Verification Apparatus and Method	DECISION ON PETITION

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

This above-identified application became abandoned for failure to timely file a response to a non-final Office Action which was mailed on September 16, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on December 17, 2004. A Notice of Abandonment was mailed on April 19, 2005.

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

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of the Continuing Application No. 11/156,885.

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

Charlema R. Grant
Petitions Attorney
Office of Petitions

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

JOSEPH S. TRIPOLI
THOMSON MULTIMEDIA LICENSING INC.
2 INDEPENDENCE WAY
P.O. BOX 5312
PRINCETON NJ 08543-5312

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APR 28 2005

OFFICE OF PETITIONS

In re Application of
Carolynn Rae Johnson
Application No. 09/994,410
Filed: November 27, 2001
Attorney Docket No.: PU010272
Title: METHOD AND SYSTEM FOR BUILDING A PLAYLIST

DECISION ON PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the petition filed January 10, 2005, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed May 5, 2004, which set a shortened statutory period for reply of three (3) months. On November 1, 2004 an amendment was received, along with a three-month extension of time. An advisory action was mailed December 13, 2004. Accordingly, the above-identified application became abandoned on November 6, 2004.

With this petition, petitioner submitted the petition fee, an amendment, and the proper statement of unintentional delay.

It is clear from rules 37 C.F.R. §§1.116 and 1.135 that abandonment of an application is risked when the applicant proffers an amendment after the mailing of a final Office action. The rule clearly indicates that the mere filing of an amendment does not relieve applicant of the duty to take appropriate action to save the application from abandonment.

---

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.

If steps are not taken after final to maintain pendency prior to the expiration of the maximum extendable period for reply, the application will go abandoned. Put another way, the submission of an after final amendment which fails to place the application in condition for allowance will result in the abandonment of the application, unless one of the following four items is filed prior to the maximum extendable period for reply:

- a subsequent amendment which places the application in condition for allowance:
- a Notice of Appeal:
- a Request for a Continuation Application pursuant to 37 C.F.R. § 1.53(b), if applicable:
- a Request for Continued Examination pursuant to 37 C.F.R. §1.114, and;
- a Terminal Disclaimer, if applicable.

Petitioner has met requirements (2) and (3) above. The fourth requirement does not apply. The instant petition is not grantable because requirement (1) above has not been satisfied. Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed[2]. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1) (i.e., a Notice of Appeal (and fee required by law); an amendment that *prima facie* places the application in condition for allowance; a continuing application under 37 C.F.R. §1.53(b); a request for continuing examination under 37 C.F.R. §1.114, if applicable; or a 37 C.F.R. §1.129(a) submission, if applicable). An amendment was received along with the instant petition. This amendment was considered by the Examiner, but it failed to place the application in condition for allowance. An advisory action has been enclosed.

For this reason, this petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

On renewed petition, petitioner should submit the required reply.

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

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski.

Any renewed petition may be submitted by mail[3], hand-delivery[4], or facsimile[5].

---

[2] See M.P.E.P. 711.03(c).

3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.

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

The general phone number for the Office of Petitions which should be used for status requests is (571) 272-3282. Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.

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

Encl. Advisory Action

---

5 (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

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Paper No. None

JOSEPH S. TRIPOLI
THOMSON MULTIMEDIA LICENSING INC.
2 INDEPENDENCE WAY
P.O. BOX 5312
PRINCETON NJ 08543-5312

COPY MAILED

MAY 3 1 2005

OFFICE OF PETITIONS

In re Application of
Carolynn Rae Johnson
Application No. 09/994,410
Filed: November 27, 2001
Attorney Docket No.: PU010272
Title: METHOD AND SYSTEM FOR BUILDING A PLAYLIST

DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the renewed petition filed May 6, 2005, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 CFR §1.113 in a timely manner to the final Office action mailed May 5, 2004, which set a shortened statutory period for reply of three (3) months. On November 1, 2004 an amendment was received, along with a three-month extension of time. An advisory action was mailed December 13, 2004. Accordingly, the above-identified application became abandoned on November 6, 2004.

The original petition was submitted on January 10, 2005, and was dismissed via the mailing of a decision on April 28, 2005, for failure to include the required reply.

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 1.17(m);
(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

With this renewed petition, Petitioner has submitted a Request for Continued Examination (RCE) under 37 C.F.R. §1.114, including a request for consideration of a concurrently submitted amendment and payment of the RCE fee. The RCE has been accepted as the required reply under 37 C.F.R. §1.137(b)(1). Having made a statement which is being construed as the proper statement of unintentional delay and having submitted the petition fee, petitioner has met all other requirements for a grantable petition under 37 C.F.R. §1.137(b).

As such, the petition is **GRANTED**.

Petitioner has mistakenly submitted the petition fee a second time. The $1500 will be refunded to his deposit account, as authorized in the petition.

The application file is being forwarded to Technology Center 2600 for consideration of the submission under 37 C.F.R. §1.114, the amendment filed on May 6, 2005.

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
www.uspto.gov

Paper No. 5

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JUN 2 0 2002

OFFICE OF PETITIONS

TIMOTHY A. FRENCH
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804

In re Application of Tsen, et al. Application No. 09/994,439 Filed: November 26, 2001 Atty. Dkt. No. 06128-266001 Title: SHOE	DECISION REFUSING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed April 8, 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 November 26, 2001 without an executed oath or declaration and naming Jimmy Tsen, Jason L. Nevans, Jonathan Beardsley, and Matthew Sumner as joint inventors. Accordingly, on December 12, 2001, a Notice to File Missing Parts of Nonprovisional Application ("Notice") was mailed, requiring an executed oath or declaration and 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 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

Petitioner lacks item (2) set forth above.

As to item (2), the declaration submitted herewith is unacceptable as it fails to comply with 37 CFR 1.63 or 1.64 has been presented. Specifically, the declaration fails to set forth the citizenship of Jimmy Tsen.

Any renewed petition must be accompanied by an oath or declaration in compliance with 37 CFR 1.63 or 1.64.

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

Application No. 09/994,439

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

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

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

Telephone inquiries regarding this decision should be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.

Alesia M Brown for

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

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Paper No. 8

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AUG 0 8 2002

OFFICE OF PETITIONS

TIMOTHY A. FRENCH
Fish & Richardson P.C.
225 Franklin Street
Boston MA 02110-2804

In re Application of :
Tsen, et al. :
Application No. 09/994,439 : DECISION GRANTING STATUS
Filed: November 26, 2001 : UNDER 37 CFR 1.47(a)
Atty. Dkt. No. 06128-266001 :
Title: SHOE :

This is in response to the renewed petition under 37 CFR 1.47(a), filed July 22, 2002.

The petition is **GRANTED**.

Petitioner has shown that inventors Jason L. Nevens and Matthew Sumner have refused to join in the filing of 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 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 returned to the Office of Initial Patent Examination for further processing.

Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Petitions Brown
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. 10

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

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DEC 0 3 2003

OFFICE OF PETITIONS

ON PETITION

In re Application of
John Saare et al
Application No. 09/994,450
Filed: November 28, 2001
Attorney Docket No. SUN-P6491

This is a decision on the petition under 37 CFR 1.137(b), filed November 17, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed June 20, 2002. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on August 21, 2002.

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

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

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

Effective December 1, 2003, the Office of Petitions can no longer receive hand-carried correspondence, or facsimile transmissions of correspondence. The centralized location for hand-carried correspondence is the Customer Window located at:

2011 South Clark Place
Crystal Plaza Two, Lobby
Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306.**

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

The application 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

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW 05-04

Paper No. 12

WAGNER, MURABITO & HAO LLP
Third Floor
Two North Market Street
San Jose CA 95113

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MAY 2 6 2004
OFFICE OF PETITIONS

In re Application of	:	
Saare et al.	:	LETTER GRANTING
Application No. 09/994,450	:	FILING DATE
Filed: 16 November, 2001	:	
Attorney Docket No. SUNP 6491	:	

This is a response to the paper styled as a petition to correct a filing date, filed on 12 March, 2004, 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 16 November, 2001, rather than the presently accorded filing date of 28 November, 2001.

The USPTO is aware that the USPS suspended Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g. 20231) from 16 November, 2001, through 29 November, 2001. On 9 October, 2001, the USPTO published a notice in the Official Gazette providing guidance in the situation in which a post office refuses to accept the deposit of mail for delivery by Express Mail service.[1] The guidance set forth in that notice also applies if a post office refuses to accept the deposit of correspondence for delivery by Express Mail due to the suspension of the USPS's Express Mail service to Washington, D.C., ZIP Code 20231, as well as the situation in which correspondence is returned as undeliverable due to this suspension.

The guidance set forth in the above-mentioned Official Gazette notice is reproduced below:

> Where the USPS refuses to accept the deposit of mail for delivery by express mail.
>
> In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit

[1] See United States Postal Service Interruption and Emergency, 1251 Off. Gaz. Pat. Office 55 (October 9, 2001).

of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 ("Express Mail Post Office to Addressee") and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.

The submission filed on 12 March, 2004, contains an affidavit by counsel's employee, Anthony Chou, stating that he attempted to to deposit the application with the United States Postal Service (USPS) via Express Mail on 16 November, 2001, but the USPS refused to accept the correspondence for deposit as Express Mail. Chou then deposited the application in Priority mail. Based on the submissions filed on 12 March, 2004, it is concluded that the present application would have been filed on 16 November, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of 16 November, 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 16 November, 2001.

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

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

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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HUFFMAN LAW GROUP PC
1832 N. CASCADE AVENUE
COLORADO SPRINGS, CO 80907-7449

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MAY 2 5 2006

OFFICE OF PETITIONS

In re Application of	:	
John Close et al	:	
Application No. 09/994,465	:	DECISION ON PETITION
Filed: November 26, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. DT:0103-CP1	:	

This is a decision on the petition, filed December 27, 2005, 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 11, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen-month publication country.

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

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

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and
(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

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

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request, which sets forth the projected publication date of August 31, 2006, has been mailed under separate cover.

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

This application is being referred to Technology Center Art Unit 3639 for appropriate action on the reply received March 4, 2006 to the non-final Office action mailed December 5, 2005.

Frances Hicks

Frances Hicks
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

Perkins Coie LLP
P.O. Box 1208
Seattle, WA 98111-1208

Mail Date: 05/07/2010

Applicant	: Gene Ciancaglini	: DECISION ON REQUEST FOR
Patent Number	: 7646979	: RECALCULATION of PATENT
Issue Date	: 01/12/2010	: TERM ADJUSTMENT IN VIEW
Application No	: 09/994,475	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/26/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **1569** 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

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

EMC CORPORATION
OFFICE OF THE GENERAL COUNSEL
176 SOUTH STREET
HOPKINTON, MA 01748

Mail Date: 04/21/2010

Applicant	: Ari Juels	: DECISION ON REQUEST FOR
Patent Number	: 7602904	: RECALCULATION of PATENT
Issue Date	: 10/13/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/994,476	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/26/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **988** 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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 7/19/06

TO SPE OF : ART UNIT

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/994477 Patent No.: 7020869

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**.

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: claim 9 should be changed to 21. claim renumbering at allowance original claim 9 is now independent claim 21.

Kakali Chaki

KAKALI CHAKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

SPE

2193
Art Unit

Staple Here Only

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT NO. : 7,020,869 B2

DATED : MARCH 28, 2006

INVENTOR(S) : PEDRAM ABRARI AND MARK J.F. ALLEN

It is certified that an error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 23, line 3, delete "claim 9" and replace with --claim 21--;
line 6, delete "claim 9" and replace with --claim 21--;
line 9, delete "claim 9" and replace with --claim 21--.

TI
TODD INGBERG
PRIMARY EXAMINER

Please, Enter

MAILING ADDRESS OF SENDER:

Clinton Martin
Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, California 94063

PATENT NO. 7,020,869 B2

No. of add'l copies

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OFFICE OF PETITIONS

OSHA LIANG L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON TX 77010

In re Application of	:
Pini, Ge, and Tirumala	: DECISION ACCORDING STATUS
Application No. 09/994,479	: UNDER 37 CFR 1.47(a)
Filed: 27 November, 2001	:
Atty Dkt No. 03226.035001;P5030	:

This is in response to the petition filed under 37 CFR 1.47(a) on 28 February, 2002 (certificate of mailing 12 February, 2002).

The Office apologizes for the delay in responding to the present petition.

The petition is **GRANTED**.

Petitioners have shown that the non-signing inventors, David Pini and Anup Tirumala, have refused to sign the declaration after having been sent a copy of the application papers. Specifically, petitioners have shown that a copy of the application papers were sent to the last known addresses of each of the non-signing inventors, but the inventors failed to return an executed declaration naming them as joint inventors along with Yuefei Ge.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the *Official Gazette*.

The application is being referred to the Publishing Division for processing into a patent.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DRW Sep-05

David M. Pini
838 E. Dana Street
Mountain View, CA 94041

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SEP 2 0 2005

OFFICE OF PETITIONS

In re Application of
Pini et al.
Application No. 09/994,479
Filed: 27 November, 2001
For: SIGN GENERATION BYPASS PATH TO ALIGNER FOR REDUCING SIGNED DATA LOAD LATENCY

Dear Mr. Pini:

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 571/272-3231. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

OSHA LIANG L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON TX 77010

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DIW Sep-05

Anup S. Tirumala
421 Camille Circle, #15
San Jose CA 95134

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SEP 2 0 2005

OFFICE OF PETITIONS

In re Application of
Pini et al.
Application No. 09/994,479
Filed: 27 November, 2001
For: SIGN GENERATION BYPASS PATH TO ALIGNER FOR REDUCING SIGNED DATA LOAD LATENCY

Dear Mr. Tirumala:

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 571/272-3231. Requests for information regarding your application should be directed to the File Information Unit at 703/308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at 703/308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

OSHA LIANG L.L.P./SUN
1221 MCKINNEY, SUITE 2800
HOUSTON TX 77010

UNITED STATES PATENT AND TRADEMARK OFFICE

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MARK W. ROBERTS
DORSEY & WHITNEY
SUITE 3400
1420 FIFTH AVENUE
SEATTLE WA 98101

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AUG 25 2003

OFFICE OF PETITIONS

In re Application of
Kie Y. Ahn et al
Application No. 09/994,511
Filed: November 26, 2001
Attorney Docket No. 500466.02

ON PETITION

This is a decision on the petition, filed August 22, 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 8, 2003 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (703) 305-8859.

After receipt of the file in the Office of Petitions, the application will be forwarded to Technology Center AU 2879 for processing of the request for continued examination under 37 CFR 1.114.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice 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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WASHINGTON, D.C. 20231
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Paper No. 5

JOSEPH P. KINCART
14 LEESIDE ROAD
CARMEL, NY 10512

COPY MAILED

APR 2 5 2003

OFFICE OF PETITIONS

In re Application of
Joseph P. Kincart
Application No. 09/994,513
Filed: November 26, 2001
Attorney Docket No. 0205

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed April 2, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Corrected Application Papers (Notice) mailed December 14, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 15, 2002.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 305-9282.

The application file is being forwarded to the Office of Initial Patent Examination.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 4

FITCH EVEN TABIN AND FLANNERY
120 SOUTH LA SALLE STREET
SUITE 1600
CHICAGO IL 60603-3406

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OFFICE OF PETITIONS

In re Application of	:	
Crawford et al.	:	
Application No. 09/994,519	:	DECISION GRANTING PETITION
Filed: 26 November, 2001	:	
Atty's Docket No. 70629	:	

This is a decision on the petition filed on 17 January, 2002, which is treated as a petition requesting that the above-identified application, including Figures 20 and 21 described in the specification, be accorded a filing date of 26 November, 2001.

The petition is granted.

On 26 November, 2001, the application was filed.

On 11 December, 2001, Initial Patent Examination Division mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of 11 December, 2001, but that Figures 20 and 21 described in the specification appeared to have been omitted.

In response, on 17 January, 2002, one (1) sheet of drawings containing Figures 20 and 21 and the present petition were submitted. Petitioners assert that Figures 20 and 21 were filed with the other application papers on 26 November, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 26 November, 2001, with the above-identified application number, and identifies the application by attorney docket number, first named inventor, and invention title, and acknowledges receipt, *inter alia*, of 19 sheets of drawings. Petitioners request that the application, including the one (1) sheet of drawings containing Figures 20 and 21, be

accorded a filing date of 26 November, 2001.

A review of the record reveals that 18 sheets of drawings, containing Figures 1-17, 18a-18b, and 19, are located among the application papers deposited on 26 November, 2001. However, the evidence is convincing that the application papers deposited on 26 November, 2001, included 19 sheets of drawings and that the sheet of drawings containing Figures 20 and 21 were subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawings containing Figures 20 and 21 as described in the specification, is entitled to a filing date of 26 November, 2001.

The "Notice" mailed on 11 December, 2001, is vacated. The petition fee will be refunded to counsel's deposit account, No. 06-1135.

The application will be processed and examined using the application papers filed on 26 November, 2001, and the copy of one (1) sheet of drawings containing Figures 20 and 21 supplied on 17 January, 2002.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 26 November, 2001, using the application papers filed on 26 November, 2001, and the one (1) sheet of drawings containing Figures 20 and 21 supplied on 17 January, 2002, and for an indication on the bib-data sheet that 19 sheets of drawings were present on filing.

Telephone inquires should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.

Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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Paper No. 8

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OFFICE OF PETITIONS

CONLEY, ROSE & TAYON
Dallas Office
Granite Park Two
5700 Granite Parkway, Suite 330
Plano TX 75024-6616

In re Application of
Dojun Rhee
Application No. 09/994,556
Filed: November 27, 2001
Attorney Docket No. 4028-00300/(99-269)
For: UNEQUAL ERROR PROTECTION REED-MULLER CODE GENERATOR AND DECODER

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(b)

RECEIVED
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OFFICE OF PETITIONS

This is in response to the reconsideration petition under 37 CFR 1.47(b), filed August 6, 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(b)" 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 November 27, 2001 without an executed oath or declaration. Accordingly, on December 17, 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 8, 2002, a petition for a one month extension of time and required fee and the instant petition and required fee were filed. The petition sets forth the last known address of Dojun Rhee, the non-signing inventor, and explains that Mr. Rhee received the application papers, but did not respond to the request that he sign the oath or declaration for the patent application. Applicant's petition under 37 CFR 1.47(b), filed February 8, 2002, was dismissed on June 26, 2002 for failure to provide an acceptable declaration. The instant reconsideration was filed on August 6, 2002.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (2) set forth above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. An oath or declaration in compliance with 37 CFR 1.63 and

1.64 signed by the Rule 1.47(b) applicant on behalf of Inventor Dojun Rhee is REQUIRED. See MPEP 409.03(b). As stated in the June 26, 2002 decision, "**The individual signing the declaration should include information pertaining to him/her. The Office requires a new declaration with the signer's name, title, the address where he/she normally receives mail, his/her residence, and his/her citizenship listed thereon in addition to the information pertaining to the inventor.**" Mr. Rhee's signature block should be left blank and the signer should sign in his/her own signature block. In addition, MPEP 409.03(b) elaborates on the requirement that a registered attorney who is signing the declaration on behalf of a corporation must submit either proof of the attorney's authority in the form of a statement signed by an appropriate corporate officer or the attorney may simply state that he is authorized to sign on behalf of the corporation.

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

cc: LSI LOGIC CORPORATION
CORPORATE LEGAL DEPARTMENT
INTELLECTUAL PROPERTY SERVICES GROUP
1551 MCCARTHY BLVD., M/S/ D-106
MILPITAS, CA 95035

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JUN 2 6 2002

OFFICE OF PETITIONS

CONLEY, ROSE & TAYON
Dallas Office
Granite Park Two
5700 Granite Parkway, Suite 330
Plano TX 75024-6616

In re Application of
Dojun Rhee
Application No. 09/994,556
Filed: November 27, 2001
Attorney Docket No. 4028-00300/(99-269)
For: UNEQUAL ERROR PROTECTION REED-MULLER CODE GENERATOR AND DECODER

DECISION REFUSING STATUS UNDER 37 CFR 1.47(b)

This is in response to the petition under 37 CFR 1.47(b), filed February 8, 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(b)" 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 November 27, 2001 without an executed oath or declaration. Accordingly, on December 17, 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 8, 2002, a petition for a one month extension of time and required fee and the instant petition and required fee were filed. The petition sets forth the last known address of Dojun Rhee, the non-signing inventor, and explains that Mr. Rhee received the application papers, but did not respond to the request that he sign the oath or declaration for the patent application.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (2) set forth above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. The declaration has not been signed by a properly empowered representative of the Rule 1.47 applicant. **No one** has signed the declaration. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 signed by the Rule 1.47(b)

applicant on behalf of Inventor Dojun Rhee is REQUIRED. See MPEP 409.03(b). The individual signing the declaration should include information pertaining to him/her. The Office requires a new declaration with the signer's name, title, the address where he/she normally receives mail, his/her residence, and his/her citizenship listed thereon in addition to the information pertaining to the inventor. As stated in the MPEP 409.03(b), where an oath is signed by a registered attorney on behalf of a corporation, either proof of the attorney's authority in the form of a statement signed by an appropriate corporate officer must be submitted, or the attorney may simply state that he is authorized to sign on behalf of the corporation.

Pursuant to petitioner's authorization, deposit account no. 12-2252 was charged a $130.00 petition fee and a $110.00 one month extension of time fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail:	Commissioner for Patents Box DAC Washington, D.C. 20231
By facsimile:	(703) 308-6916 Attn: Office of Petitions
By hand:	Office of Petitions 2201 South Clark Place Crystal Plaza 4, Suite 3C23 Arlington, VA 22202

Telephone inquiries should be directed to the undersigned at (703) 308-6712.

E. Shirene Willis

E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: SANDEEP JAGGI
LSI LOGIC CORPORATION
CORPORATE LEGAL DEPARTMENT
INTELLECTUAL PROPERTY SERVICES GROUP
1551 MCCARTHY BLVD., M/S/ D-106
MILPITAS, CA 95035

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OFFICE OF PETITIONS

CONLEY, ROSE & TAYON
Dallas Office
Granite Park Two
5700 Granite Parkway, Suite 330
Plano TX 75024-6616

In re Application of
Dojun Rhee
Application No. 09/994,556
Filed: November 27, 2001
Attorney Docket No. 4028-00300/(99-269)
For: UNEQUAL ERROR PROTECTION REED-MULLER CODE GENERATOR AND DECODER

DECISION REFUSING STATUS UNDER 37 CFR 1.47(b)

This is in response to the reconsideration petition under 37 CFR 1.47(b), filed August 6, 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(b)" 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 November 27, 2001 without an executed oath or declaration. Accordingly, on December 17, 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 8, 2002, a petition for a one month extension of time and required fee and the instant petition and required fee were filed. The petition sets forth the last known address of Dojun Rhee, the non-signing inventor, and explains that Mr. Rhee received the application papers, but did not respond to the request that he sign the oath or declaration for the patent application. Applicant's petition under 37 CFR 1.47(b), filed February 8, 2002, was dismissed on June 26, 2002 for failure to provide an acceptable declaration. The instant reconsideration was filed on August 6, 2002.

A grantable petition under 37 CFR 1.47(b) requires:

(1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration;
(2) an acceptable oath or declaration;
(3) the petition fee;
(4) a statement of the last known address of the non-signing inventor;
(5) proof of proprietary interest; and
(6) proof of irreparable damage.

Applicant lacks item (2) set forth above.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. An oath or declaration in compliance with 37 CFR 1.63 and

1.64 signed by the Rule 1.47(b) applicant on behalf of Inventor Dojun Rhee is REQUIRED. See MPEP 409.03(b). As stated in the June 26, 2002 decision, "**The individual signing the declaration should include information pertaining to him/her. The Office requires a new declaration with the signer's name, title, the address where he/she normally receives mail, his/her residence, and his/her citizenship listed thereon in addition to the information pertaining to the inventor.**" Mr. Rhee's signature block should be left blank and the signer should sign in his/her own signature block. In addition, MPEP 409.03(b) elaborates on the requirement that a registered attorney who is signing the declaration on behalf of a corporation must submit either proof of the attorney's authority in the form of a statement signed by an appropriate corporate officer or the attorney may simply state that he is authorized to sign on behalf of the corporation.

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

cc: LSI LOGIC CORPORATION
CORPORATE LEGAL DEPARTMENT
INTELLECTUAL PROPERTY SERVICES GROUP
1551 MCCARTHY BLVD., M/S/ D-106
MILPITAS, CA 95035

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WASHINGTON, D.C. 20231
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Paper No. 11

CONLEY, ROSE & TAYON
Dallas Office
Granite Park Two
5700 Granite Parkway, Suite 330
Plano TX 75024-6616

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OFFICE OF PETITIONS

In re Application of
Dojun Rhee
Application No. 09/994,556
Filed: November 27, 2001
Attorney Docket No. 4028-00300/(99-269)
For: UNEQUAL ERROR PROTECTION REED-MULLER CODE GENERATOR AND DECODER

: DECISION ACCORDING STATUS
: UNDER 37 CFR 1.47(b)

This is in response to the reconsideration petition under 37 CFR 1.47(b), filed October 4, 2002.

The petition is granted.

Petitioner has shown that the non-signing inventor, Mr. Dojun Rhee, has constructively refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the exhibits to the February 8, 2002 petition establish that the inventor was mailed the application papers, including the specification, claims and drawings, received them, but failed to respond to the request that he sign the declaration. In addition, petitioner has shown that LSI Logic Corporation has a proprietary interest in the above-identified application with the copy of the employment agreement showing that the inventor had an obligation to assign any patent rights to LSI Logic Corporation. 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 Technology Center 2600 for examination in due course.

Telephone inquiries 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

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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DOJUN RHEE
KANGNAM-KU APGUJUNG-DON HYUNDAI APT. 115
DONG 603 HO
SEOUL KOREA

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OFFICE OF PETITIONS

In re Application of
Dojun Rhee
Application No. 09/994,556
Filed: November 27, 2001
Attorney Docket No. 4028-00300/(99-269)
For: UNEQUAL ERROR PROTECTION
REED-MULLER CODE GENERATOR
AND DECODER

LETTER

Dear Mr. Rhee:

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: CONLEY, ROSE & TAYON
Dallas Office
Granite Park Two
5700 Granite Parkway, Suite 330
Plano TX 75024-6616

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OIPE JC37
FEB 25 2005
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PTO/SB/83 (09-04)
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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.

REQUEST FOR WITHDRAWAL AS ATTORNEY OR AGENT AND CHANGE OF CORRESPONDENCE ADDRESS

Application Number	09/994,576
Filing Date	NOVEMBER 27, 2001
First Named Inventor	HUYN
Art Unit	1631
Examiner Name	LY
Attorney Docket Number	SURR.79

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

- [x] all the attorneys/agents of record.
- [ ] the attorneys/agents (with registration numbers) listed on the attached paper(s), or
- [ ] the attorneys/agents associated with Customer Number

NOTE: This box can only be checked when the power of attorney of record in the application is to all the practitioners associated with a customer number.

The reasons for this request are:

CORRESPONDENCE ADDRESS

1. [ ] The correspondence address is NOT affected by this withdrawal.
2. [x] Change the correspondence address and direct all future correspondence to:

[x] The address associated with Customer Number: 22442

OR

[ ] Firm *or* Individual Name					
Address					
City		State		Zip	
Country					
Telephone				Fax	

Signature	Darla G. Yoerg		
Name	Darla G. Yoerg	Registration No.	48,053
Date	February 22, 2005	Telephone No.	303-268-0066

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.

Not Approved
3-21-05

This collection of information is required by 37 CFR 1.36. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

SWANSON & BRATSCHUN L.L.C.
1745 SHEA CENTER DRIVE
SUITE 330
HIGHLANDS RANCH CO 80129

In re Application of	:
Nam Q. Huyn	:
Serial No.: 09/994,576	: STATUS LETTER
Filed: November 27, 2001	:
Attorney Docket No.: SURR.79	:

This is in response to applicant's attorney's request, filed February 25, 2005, to withdraw from representation in the above identified application.

э 10.40 Withdrawal from employment.
(b) Mandatory withdrawal . A practitioner representing a client before the Office shall withdraw from employment if:
(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;
(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;
(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or
(4) The practitioner is discharged by the client.
(c) Permissive withdrawal. If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office unless such request or such withdrawal is because:
(1) The petitioner's client:
(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;
(ii) Personally seeks to pursue an illegal course of conduct;
(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;
(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;
(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or
(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.
(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;
(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;
(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;
(5) The practitioner's client knowingly and freely assents to termination of the employment; or
(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

Applicant's attorney has provided no reason for withdrawal, as required.

The request to withdraw is **DISMISSED**.

Should there be any questions with regard to this letter please contact Marianne C. Seidel by letter addressed to the Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at 571-272-0584 or by facsimile transmission at Office facsimile number.

Marianne C. Seidel

Marianne C. Seidel
Special Program Examiner
Technology Center 1600

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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SALIWANCHIK LLOYD & SALIWANCHIK
A PROFESSIONAL ASSOCIATION
PO BOX 142950
GAINESVILLE, FL 32614-2950

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MAR 0 9 2005

OFFICE OF PETITIONS

In re Application of
Douglas Levinson
Application No. 09/994,585
Filed: November 27, 2001
Attorney Docket No. 10436-0015-999

: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(3) AN
: UNDER 37 CFR 1.78(a)(6)
:

This is a decision on the petition, filed March 4, 2004, which is being treated under 37 CFR 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§120 and 119(e) for the benefit of prior-filed nonprovisional and provisional applications, as set forth in the concurrently filed amendment.

The petitions are **Granted**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) 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 November 27, 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.

While the statement of unintentional delay does not comply with the rule, the statement presented will be construed as meaning that "the entire delay between the date the claim was due under 37 CFR 1.78(a)(1) and the date the claim was filed was unintentional." Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

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.

Any questions concerning this matter may be directed to Wan Laymon at (571) 272-3220.

This matter is being referred to Technology Center Art Unit 1639 for appropriate action on the amendments submitted March 4, 2004 and June 17, 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 applications.

Frances Hicks

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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OFFICE OF PETITIONS

In re Application of	:
Levinson	: DECISION ON APPLICATION
Application No. 09/994,585	: FOR PATENT TERM ADJUSTMENT
Filed: November 27, 2001	:
Atty. Dkt. No: 10436-0015-999	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(b)" filed December 12, 2005.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **DISMISSED**.

Applicant requests that the Determination of Patent Term Adjustment be corrected from 4 days, as indicated on the Determination of Patent Term Adjustment mailed September 22, 2005, to an adjustment of 182 days. Applicant's arguments regarding the proper adjustment to which the instant application for patent is entitled have been carefully considered. The official record has been carefully reviewed and the correct calculation of adjustment is set forth herein.

At the time of allowance, the application was entitled to zero days of patent term adjustment. The overall adjustment for Office delays is 368 days. The overall reduction for applicant's failure to engage in reasonable efforts to conclude prosecution is 407 days.

An adjustment of 94 days in accordance with 37 CFR 1.702(a)(1) and 1.703(a)(1) can be attributed to the Office.

A further adjustment of 274 days in accordance with 37 CFR 1.702(a)(2) can be attributed to the Office. The adjustment began July 5, 2004, the day after the date that a reply under 35 USC 132 was filed, and ended April 4, 2005, the date the final Office action was mailed. *See* 37 CFR 1.703(a)(2).

A reduction of 133 days in accordance with 37 CFR 1.704(c)(7) can be attributed to applicant in connection with the reply submitted September 12, 2003. The reduction began May 3, 2003, the day after the day that the date the reply having an omission was filed, and

ended September 12, 2003, the date that the reply correcting the omission was filed.

A reduction of 214 days in accordance with 37 CFR 1.704(c)(8) can be attributed to applicant in response to the supplemental reply submitted October 4, 2004. The reduction began March 5, 2004, the day after the date the initial reply was filed, and ended October 4, 2004, the date that the supplemental reply was filed.

It is noted that the June 17, 2004 submission is also a supplemental paper within the meaning of 37 CFR 1.704(c)(8). As the period of time related to the October 4, 2004 and June 17, 2004 submissions overlap, the period of reduction is calculated as commencing March 5, 2004, the day after the date that the initial reply was filed, and ending October 4, 2004, the date the later supplemental reply was filed.

A reduction of one day in accordance with 37 CFR 1.704(b) can be attributed to applicant in response to the amendment filed July 5, 2005. The reduction began July 5, 2005, the day after the date that is three months after the date the final Office action was mailed, and ended July 5, 2005, the date a reply to the final Office action was filed.

As properly pointed out by applicant, a further reduction of 59 days can be attributed to applicant in accordance with 37 CFR 1.704(c)(8) in connection with the Notice of Appeal submitted September 2, 2005. The reduction began July 6, 2005, the day after the date the initial reply was filed, and ended September 2, 2005, the date that the later supplemental reply (Notice of Appeal) was filed.

Accordingly, as of the time of allowance, the application is entitled to an adjustment of zero days.

The required application fee $200.00 has been charged to applicant's deposit account as authorized.

Applicant is further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application file is being forwarded to the Office of Patent Publication for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Senior 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

Day : Monday
Date: 8/21/2006

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Time: 07:53:37

PTA Calculations for Application: 09/994585			
Application Filing Date:	11/27/2001	PTO Delay (PTO):	368
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	364
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-36		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
87	08/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		36	
86	08/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO		36	
85	08/21/2006	ADJUSTMENT OF PTA CALCULATION BY PTO	36		
68	09/22/2005	MAIL NOTICE OF ALLOWANCE			
67	09/22/2005	MAIL EXAMINER'S AMENDMENT			
66	09/21/2005	ISSUE REVISION COMPLETED			
65	09/21/2005	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
64	09/21/2005	CASE DOCKETED TO EXAMINER IN GAU			
63	09/19/2005	EXAMINER'S AMENDMENT COMMUNICATION			
62	09/19/2005	NOTICE OF ALLOWABILITY			
61	09/15/2005	DATE FORWARDED TO EXAMINER			
60	09/02/2005	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
59	09/02/2005	NOTICE OF APPEAL FILED			
58	09/02/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
57	07/21/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		16	53
56	07/21/2005	MAIL ADVISORY ACTION (PTOL - 303)			
55	07/20/2005	ADVISORY ACTION (PTOL-303)			
54	07/08/2005	DATE FORWARDED TO EXAMINER			
53	07/05/2005	AMENDMENT AFTER FINAL REJECTION		1	52
52	04/04/2005	MAIL FINAL REJECTION (PTOL - 326)	274		25
51	03/21/2005	FINAL REJECTION			
50	03/09/2005	PETITION DECISION - GRANTED			
49	03/04/2004	PETITION ENTERED			

48	01/24/2005	DATE FORWARDED TO EXAMINER			
47	10/04/2004	SUPPLEMENTAL RESPONSE		214	25
46	01/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
45	01/13/2005	CASE DOCKETED TO EXAMINER IN GAU			
44	10/01/2004	DATE FORWARDED TO EXAMINER			
43	06/17/2004	SUPPLEMENTAL RESPONSE			
42	06/23/2004	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
41	05/17/2004	REFERENCE CAPTURE ON IDS			
40	05/17/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	03/20/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
30	03/20/2004	PETITION FEE PAID			
29	03/04/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
27	03/04/2004	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
26	03/20/2004	DATE FORWARDED TO EXAMINER			
25	03/04/2004	RESPONSE AFTER NON-FINAL ACTION			
24	12/08/2003	MAIL NON-FINAL REJECTION			
23	12/01/2003	NON-FINAL REJECTION			
22	11/24/2003	CASE DOCKETED TO EXAMINER IN GAU			
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20	09/30/2003	DATE FORWARDED TO EXAMINER			
19	09/12/2003	RESPONSE TO ELECTION / RESTRICTION FILED		133	14
18	08/12/2003	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
17	06/20/2003	CORRESPONDENCE ADDRESS CHANGE			
16	06/23/2003	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
15	06/05/2003	DATE FORWARDED TO EXAMINER			
14.1	05/02/2003	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
14	05/02/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
13	05/01/2003	MAIL RESTRICTION REQUIREMENT	94		-1
12	04/30/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
11	10/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
10	03/06/2002	CASE DOCKETED TO EXAMINER IN GAU			

9	02/22/2002	APPLICATION DISPATCHED FROM OIPE			
8	02/20/2002	APPLICATION IS NOW COMPLETE			
6	02/06/2002	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
5	02/06/2002	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
4	12/21/2001	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
3	12/14/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	11/30/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/27/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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JUL 8 2005

In re Application of: Ishii et al	:	
Application No.: 09/994,712	:	NOTICE OF WITHDRAWAL
Filed: November 28, 2001	:	FROM ISSUE
Attorney Docket No.: 003510-112	:	UNDER 37 CFR ∋ 1.313
	:	

The purpose of this communication is to inform you that the above identified application is being withdrawn from issue pursuant to 37 CFR ∋ 1.313.

The above-identified application is hereby withdrawn from issue. The Notice of Allowance and Issue Fee Due and the Notice of Allowability mailed July 14, 2004, are hereby vacated.

The application is being withdrawn to permit reopening of prosecution. The reasons therefor will be communicated to you by the examiner.

If the issue fee has been submitted, the applicant may request a refund, or may request that the fee be credited to a deposit account. However, applicant may wait until the application is either again found allowable or held abandoned. If the application is allowed, upon receipt of a new Notice of Allowance and Issue Fee Due, applicant may request that the previously submitted issue fee be applied toward payment of the issue fee in the amount identified on the new Notice of Allowance and Issue Fee Due. If the application is abandoned, applicant may request either a refund or a credit to a Deposit Account.

Telephone inquires should be directed to Stephen Meier at (571)-272-2149.

The above-identified application is being forwarded to the examiner for prompt appropriate action.

Arthur Grimley, Acting Director
Technology Center 2800

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Paper No. 9

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HUNTON & WILLIAMS
INTELLECTUAL PROPERTY DEPARTMENT
1900 K STREET, NW, SUITE 1200
WASHINGTON, DC 20006

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OFFICE OF PETITIONS

In re Application of	:
Robert J. Rosko et al	:DECISION DISMISSING PETITION
Application No. 09/994,725	:UNDER 37 CFR 1.137(f)
Filed: November 28, 2001	:
Attorney Docket No. 47004.000111	:

This is a decision on the petition under 37 CFR 1.137(f),[1] filed January 15, 2003, to revive the above-identified application.

The petition is **dismissed** as inappropriate for the reasons stated below.

The record discloses that, on November 28, 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 international agreement, that requires publication at eighteen months after filing."

Petitioner now 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 because this application became abandoned for failure to notify the Office within 45 days of the filing of a corresponding international or foreign application. In this regard, petitioner states that this application is a continuation-in-part of U.S. Application No. 09/591,687, filed June 12, 2000, which is the subject of PCT Application No. PCT/US01/40911, which was filed on June 12, 2001, which date

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[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.

is prior to the date of filing the instant application.

The instant nonprovisional application did not become abandoned as a result of the filing of a corresponding application filed in another country, or under a multilateral international agreement, **subsequent** to the filing of 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 facts of this case are that the subject application was filed on November 28, 2001, and the corresponding foreign application was filed on June 12, 2001. 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 May 15, 2003 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 $1,300 charged to petitioner's deposit account on January 17, 2003 will not be refunded.

This application is being forwarded to Technology Center AU 3628 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-8680.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

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In re Application of	:	
Kurase	:	
Application No. 09/994,747	:	DECISION
Filed: 28 November, 2001	:	
Attorney Docket No. 0879-0364P	:	

This is a decision on the petitions filed on 14 May, 2008, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application, and in the alternative 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. §1.181 is **DISMISSED**; the petition under 37 C.F.R. §1.137(b) is **DISMISSED**.

Any request for reconsideration of this decision should be filed **within two (2) months** from the mail date of this decision. *Note* 37 C.F.R. §1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 C.F.R. §1.181 to Withdraw the Holding of Abandonment" and/or "Renewed Petition under 37 CFR §1.137(b)."

In the alternative, Petitioner may file a petition under 37 C.F.R. §1.137(b) to revive an application abandoned due to unintentional delay. (Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 C.F.R. §1.137(b). A petition alleging "unintentional" delay under 37 C.F.R. §1.137(b) must be accompanied by the petition fee, and Petitioner always should refer to the Office website (http://www.uspto.gov/main/howtofees.htm) to ensure submission of the proper fees. (A specific fee is not stated here because fee amounts change and there is no way to know when Petitioner will submit materials for filing.))

This is **not** a final agency action within the meaning of 5 U.S.C. §704.

As to the Request to Withdraw the Holding of Abandonment

Petitioner's attention is drawn to the guidance in the Commentary at MPEP §711.03(c).[1]

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[1] The Commentary at MPEP §711.03(c) provides in pertinent part:

*****

I. PETITION TO WITHDRAW HOLDING OF ABANDONMENT

A petition to revive an abandoned application (discussed below) should not be confused with a petition from an examiner's holding of abandonment. Where an applicant contends that the application is not in fact abandoned (e.g., there is disagreement as to the sufficiency of the reply, or as to controlling dates), a petition under 37 CFR 1.181(a) requesting withdrawal of the holding of abandonment is the appropriate course of action, and such petition does not require a fee. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Two additional procedures are available for reviving an application that has become abandoned due to a failure to reply to an Office Action: (1) a petition under 37 CFR 1.137(a) based on unavoidable delay; and (2) a petition under 37 CFR 1.137(b) based on unintentional delay.

A. Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action

In *Delgar v. Schulyer*, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of *Delgar*, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of *Delgar* is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133).

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner **>describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.<

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Evidence of nonreceipt of an Office communication or action (e.g., Notice of Abandonment or an advisory action) other than that action to which reply was required to avoid abandonment would not warrant withdrawal of the holding of abandonment. Abandonment takes place by operation of law for failure to reply to an Office action or timely pay the issue fee, not by operation of the mailing of a Notice of Abandonment. See *Lorenz v. Finkl*, 333 F.2d 885, 889-90, 142 USPQ 26, 29-30 (CCPA 1964); *Krahn v. Commissioner*, 15 USPQ2d 1823, 1824 (E.D. Va 1990); *In re Application of Fischer*, 6 USPQ2d 1573, 1574 (Comm'r Pat. 1988).

B. Petition To Withdraw Holding of Abandonment Based on Evidence That a Reply Was Timely Mailed or Filed

37 CFR 1.10(c) through 1.10(e) and 1.10(g) 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), (e), or (g) (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.

A proper showing (for relief under 37 C.F.R. §1.181):

- (as to non-receipt) requires at the very minimum: a statement from practitioner stating that the Office action was not received by the practitioner; a statement from the practitioner attesting to the fact that a search of the file jacket and docket records for the application indicates that the Office action was not received with a copy of those docket records; and a brief statement of the calendaring process and a copy of the due-date (calendar) docket record(s) where the nonreceived Office action would have been scheduled for reply had it been received must be attached to and referenced in the practitioner's statement; alternatively,

- (for a showing of timely and proper reply) requires a statement from practitioner stating that the reply was timely submitted by the practitioner; and copies of all papers submitted as and/or in support of that reply, with/and a copy of the date-stamped receipt card, Office FAX receipt acknowledgement (not simply Petitioner's FAX transmittal), or EFS receipt acknowledgment from the Office, along with practitioner's attestation as to the correctness/completeness of his/her records.

The showing(s) must include that of the person(s) with first-hand knowledge and an acknowledgment by the Petitioner that he/she has reviewed that information in compliance with his/her duty of candor to the Office. Petitioner has failed to make the showings of search and non-discovery with the documentary presentations discussed herein (and set forth in the footnote, *infra*, and the showings as to docketing and calendaring, again with documentary support—all in support of the averment of nonreceipt..

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 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).

37 CFR 1.8(b) also permits applicant to notify the Office of a previous mailing or transmission of correspondence and submit a statement under 37 CFR 1.8(b)(3) accompanied by a duplicate copy of the correspondence when a reasonable amount of time (e.g., more than one month) has elapsed from the time of mailing or transmitting of the correspondence. Applicant does not have to wait until the application becomes abandoned before notifying the Office of the previous mailing or transmission of the correspondence. Applicant should check the private Patent Application Information Retrieval (PAIR) system for the status of the correspondence before notifying the Office. See MPEP §512.

C. Treatment of Untimely Petition To Withdraw Holding of Abandonment

37 CFR 1.181(f) provides that, *inter alia*, except as otherwise provided, any petition not filed within 2 months from the action complained of may be dismissed as untimely. Therefore, any petition (under 37 CFR 1.181) to withdraw the holding of abandonment not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. 37 CFR 1.181(f).
Rather than dismiss an untimely petition to withdraw the holding of abandonment under 37 CFR 1.181(f), the Office may require a terminal disclaimer as a condition of granting an untimely petition to withdraw the holding of abandonment.

*****

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.)

It appears that Petitioner has not satisfied the requirements of the regulation (proper reply: e.g., a request for continued examination (RCE) and fee, and submission under 37 C.F.R. §1.114), as discussed below.

BACKGROUND

The record reflects as follows:

Petitioner failed to reply to the final Office action mailed on 14 August, 2007, with reply due under a non-extendable deadline on or before 14 November, 2007.

The application went abandoned by operation of law after midnight 14 November, 2007.

The Office mailed the Notice of Abandonment on 2 May, 2008.

On 14 May, 2008, Petitioner filed the instant petition averring, *inter alia*, non-receipt of the Notice in question and supporting that with the complaint of a technical problem resulting from non-availability for online view/downloading of the Office action at the time Email notification was received by Petitioner's firm from the Office. Petitioner avers that Office technical staff has confirmed a technical problem (an Email is included with petition), suggesting the possibility that the final Office action might not have been available at the moment of the Email notification—and possibly not until the next day (15 August, 2007). Petitioner indicates that he received the 14 August, 2007, Email Notice of the final Office action, looked to Private PAIR and found only an Examiner Interview Summary—which Petitioner fails to acknowledge had been mailed a week earlier on 7 August, 2007—and apparently did not inquire[2] further to Private PAIR thereafter.

Petitioner states that the Office action in question has not been received. However, the actual process was/is that Petitioner received/receives at his office an Email notification of the lodging of an Office action on Private PAIR for Petitioner to download, review and reply. Petitioner acknowledges receiving the notification, and represents only that the Office action in question was not found online on the one occasion Petitioner attempted to look for it—and there is no

[2] Petitioner has provided no indication that he perceived a diligence/duty requirement to inquire further in the matter. For more than a century the touchstone of proper practice required before the Office has been defined as "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." *ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887). (Emphasis supplied.) See also: *In re Mattullath*, 38 App. D.C. 497, 514-15 (1912).

indication Petitioner looked again. Thus, at the very least Petitioner failed to state that he acted to search. Moreover, Petitioner, and not a member of his office staff, is the registered practitioner with the duties of diligence and candor.

Petitioner has not satisfied the requirements discussed at MPEP §711.03(c), set forth *in extenso* herein and always available online at www.uspto.gov . Moreover, the petition is set forth in a third-person fashion without the appropriate first-persons statements required.

Petitioner has submitted with the instant petition an after-final amendment, which Petitioner—as one registered to practice before the Office—is aware is not a proper reply,[3] and the Examiner has stated that he will not enter Petitioner's 14 May, 2008, after-final amendment.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and 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.[4]

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.

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).

Allegations as to the Request to Withdraw the Holding of Abandonment

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.[5] (*See*, also, the commentary at MPEP §711.03(c)(I)(A) and (B).) And the regulation requires that relief be sought within two (2) months of the act complained of.

---

[3] A proper reply is an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114). (See: MPEP §711.03(c).)

[4] 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).

[5] See: Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

Petitioner has not complied with the showing requirements set forth at MPEP §711.03(c)(I)(A) and/or (B).

Allegations as to Abandonment
Due to Unintentional Delay

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.[6],[7]

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**; and the petition under 37 C.F.R. §1.137(b) is **dismissed** and the fee is charged as authorized Deposit Account 02-2448.

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.**

[6] 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).

[7] 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[8]) 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

[8] The regulations at 37 C.F.R. §1.2 provide:

§1.2 Business to be transacted in writing.

All business with the Patent and Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BIRCH STEWART
KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH VA 22040-0747

COPY MAILED
DEC 0 2 2008
OFFICE OF PETITIONS

In re Application of :
Kurase :
Application No. 09/994,747 : DECISION
Filed: 28 November, 2001 :
Attorney Docket No. 0879-0364P :

This is a decision on the petitions filed on 31 October, 2008, considered as a petition under 37 C.F.R. §1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application, and in the alternative 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. §1.181 is **DISMISSED**; however, the petition under 37 C.F.R. §1.137(b) is **GRANTED**.

As to the Request to Withdraw
the Holding of Abandonment

Petitioners are directed to the Commentary at MPEP §711.03(c)(I) for guidance as to the proper showing and timeliness requirements for relief under 37 C.F.R. §1.181.

It does not appear that Petitioner has satisfied the showing requirements.

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 as follows:

Petitioner failed to reply to the final Office action mailed on 14 August, 2007, with reply due under a non-extendable deadline on or before 14 November, 2007.

The application went abandoned by operation of law after midnight 14 November, 2007.

The Office mailed the Notice of Abandonment on 2 May, 2008.

On 14 May, 2008, Petitioner filed a petition averring, *inter alia*, non-receipt of the Notice in question and supporting that with the complaint of a technical problem resulting from non-availability for online view/downloading of the Office action at the time Email notification was received by Petitioner's firm from the Office. Petitioner averred that Office technical staff confirmed a technical problem (an Email is included with petition), suggesting the possibility that the final Office action might not have been available at the moment of the Email notification—and possibly not until the next day (15 August, 2007). Petitioner indicated that he received the 14 August, 2007, Email Notice of the final Office action, looked to Private PAIR and found only an Examiner Interview Summary—which, Petitioner fails to acknowledge, had been mailed a week earlier on 7 August, 2007—and apparently Petitioner did not inquire[1] further to Private PAIR thereafter. While Petitioner stated that the Office action in question was not received, the actual process was/is that Petitioner received/receives at his office an Email notification of the lodging of an Office action on Private PAIR for Petitioner to download, review and reply. Petitioner acknowledges receiving the notification, and represents only that the Office action in question was not found online on the one occasion Petitioner attempted to look for it—and there is no indication Petitioner looked again. At the very least Petitioner failed to state that he acted to search. The registered practitioner's duties of diligence and candor cannot be assigned to another. Petitioner sought in the alternative revival of the application under the provisions of under 37 C.F.R. §1.137(b), averring unintentional delay. However, because Petitioner failed to file a proper reply (an amendment *prima facie* placing the application in condition for allowance, a Notice of Appeal, or an RCE (with fee and submission under 37 C.F.R. §1.114—*see*: MPEP §711.03(c)) to a final Office action, that route to pending status also was unavailable to Petitioner. Thus, the petition was dismissed on 2 September, 2008.

On 31 October, 2008, Petitioner re-advanced his requests for relief alternatively under 37 C.F.R. §1.181 and §1.137(b). While Petitioner made no different/greater showing in support of his request to withdraw the holding of abandonment than on the earlier petition, Petitioner did file in support of his petition to revive under 37 C.F.R. §1.137(b) not only the petition and fee, but also

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[1] Petitioner has provided no indication that he perceived a diligence/duty requirement to inquire further in the matter. For more than a century the touchstone of proper practice required before the Office has been defined as "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." *ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887). (Emphasis supplied.) See also: *In re Mattullath*, 38 App. D.C. 497, 514-15 (1912).

a reply in the form of an RCE (with fee and submission under 37 C.F.R. §1.114), and made the statement of unintentional delay.

The availability of applications and application papers online to applicants/practitioners who diligently associate their Customer Number with the respective application(s) now provides an applicant/practitioner on-demand information as to events/transactions in an application.

Out of an abundance of caution, Petitioners always are reminded that the filing of a petition under 37 C.F.R. §1.181 does not toll any periods that may be running any action by the Office and a petition seeking relief under the regulation must be filed within two (2) months of the act complained of (*see*: 37 C.F.R. §1.181(f)), and 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.[2]

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).[3]
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.

Allegations as to the Request to Withdraw the Holding of Abandonment

The guidance in the Commentary at MPEP §711.03(c)(I) specifies the showing required and how it is to be made and supported.

Petitioner failed to make the showing required.

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[2] 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).

[3] 35 U.S.C. §133 provides:

35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

Allegations as to Abandonment
Due to Unintentional Delay

The requirements under 37 C.F.R. §1.137(b) have been satisfied.

CONCLUSION

Accordingly, The petition under 37 C.F.R. §1.181 is **dismissed**; and the petition under 37 C.F.R. §1.137(b) is **granted**.

The instant application is released to Technology Center/AU (TC/AU) 2622 for further processing 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

[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.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : 4/27/05

TO SPE OF : ART UNIT 2815

SUBJECT : Request for Certificate of Correction on Patent No.: 6815841

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 claims

OK SVC 5/19/05

Thank You For Your Assistance

E Young
Certificates of Correction Branch

The request for issuing the above-identified correction(s) is hereby:
Note your decision on the appropriate box.

5/19/05 SVC ☒ **Approved** — **All** changes apply.

☐ **Approved in Part** — Specify below which changes **do not** apply.

☐ **Denied** — State the reasons for denial below.

Comments:

Tom Thomas
SPE

2815
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. 4

MILES & STOCKBRIDGE
1751 Pinnacle Drive, Suite 500
McLean, VA 22102-3833

MAIL

APR 0 9 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Li Fu Chang et al.
Application No. 09/994,763
Filed: November 28, 2001
For: ACQUISITION MATCHED FILTER FOR W-CDMA SYSTEMS PROVIDING FREQUENCY OFFSET ROBUSTNESS

DECISION ON REQUEST TO WITHDRAW AS ATTORNEY

This is a decision on the Request To Withdraw from Attorney filed March 20, 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**.

Samuel W. Nitros is withdrawn from record.

The correspondence address is not changed by this decision.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Mr. S. H. Dworetsky
AT&T Corp.
Room 2A-207
One AT&T Way
Bedminster, NJ 07921

MAILED

JUL 0 5 2005

Technology Center 2100

In re Application of: BROWN, et al.
Application No. 09/994,772
Filed: November 28, 2001
For: CORRELATING INFORMATION BETWEEN INTERNET AND CALL CENTER ENVIRONMENTS

DECISION ON PETITION UNDER 37 CFR § 1.181 TO WITHDRAW HOLDING OF ABANDONMENT

This is a decision on the petition under 37 CFR § 1.181 to withdraw the holding of abandonment of the above-identified application filed 18 January 2005.

The application was held abandoned for failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (04 August 2004). A Notice of Abandonment was mailed 20 December 2004.

The Notice of Allowance mailed 04 August 2004 and the Notice of Abandonment mailed 20 December 2004 both contained an incorrect correspondence address. Accordingly, these communications are hereby VACATED. The petition is **GRANTED**.

The Office regrets any inconvenience caused by the incorrect correspondence address.

The application is being forwarded to the Technology Center support staff for (1) correction of the correspondence address (the correct correspondence address being Mr. S. H. Dworetsky, AT&T Corp., Room 2A-207, One AT&T Way, Bedminster, NJ 07921) and (2) remailing of the Notice of Allowance.

Pinchus M. Laufer
Special Program Examiner
Technology Center 2100
Computer Architecture, Software and Information Security
571-272-3599

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

BRUCE H. BERNSTEIN
GREENBLUM & BERSTEIN, P.L.C.
1941 Roland Clarke Place
Reston, VA 20191

MAIL

JAN 8 - 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

In re Application of:
Mitsuhiro Kasahara, et al.
Application No.: 09/856,161
Filed: November 28, 2001
For: DISPLAY DEVICE AND METHOD OF CONTROLLING IT BRIGHTNESS

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the petition filed November 28, 2001, to make the above-identified application special pursuant to M.P.E.P. § 708.02 (VIII).

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(I), (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.

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
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 4

PATENT ADMINISTRATOR
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET
SUITE 1600
CHICAGO, IL 60661-3693

COPY MAILED

AUG 1 5 2002

OFFICE OF PETITIONS

In re Application of
Arnold Mai and Philippe Jean Alphonse Seyler
Application No. 09/994,776
Filed: November 28, 2001
Attorney Docket No. 13201.00070
Title of Invention: STRIPPER ASSEMBLY

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed November 28, 2001.

The petition is GRANTED.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application after having been presented with the application papers. Specifically, the petition indicates the application papers were sent via Federal Express to inventor's last known address. The non-signing inventor's failure to respond to the application sufficiently establishes that he refuses to execute 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 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 is being forwarded to the Office of Initial Patent Examination.

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.

Nancy Johnson for

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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AUG 1 5 2002

OFFICE OF PETITIONS

Philippe Jean Alphonse Seyler
65 Avenue Victor Hugo
Luxembourg L-1750
Luxembourg

In re Application of
Arnold Mai and Philippe Jean Alphonse Seyler
Application No. 09/994,776
Filed: November 28, 2001
Attorney Docket No. 13201.00070
Title of Invention: STRIPPER ASSEMBLY

DECISION GRANTING STATUS UNDER 37 CFR 1.47(a)

Dear Mr. Seyler:

You Philippe Jean Alphonse Seyler are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 C.F.R. § 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost as per 37 C.F.R. § 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 C.F.R. § 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251. 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).

Nancy Johnson for
Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: ERIC SPENCER
PATENT ADMINSTRATOR
KATTEN MUCHIN ZAVIS ROSENMAN
525 WEST MONROE STREET
SUITE 1600
CHICAGO, IL 60661-3693

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Technology Center 2100

Paper No. 3

ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 North Seventeenth Street
Suite 1800
Arlington, VA 22209

In re Application of: Oscar P. Pinto, et al.	)	
Application No. 09/994,779	)	
Filed: November 28, 2001	)	**DECISION ON REQUEST FOR**
For: MECHANISM FOR MANAGING	)	**WITHDRAWAL AS ATTORNEY**
INCOMING DATA MESSAGES IN A	)	
CLUSTER	)	

This is a decision on the Request To Withdraw from Representation filed April 29, 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: Schwegman, Lundberg, Woessner & Kluth P.A.
c/o Anne Richards
1600 TCF Tower
121 S. 8th Street
Minneapolis, MN 55402

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NOV 14 2003

Paper No. 10

In re Application of
François Girard *et al*
Application No. 09/994,783
Filed: November 28, 2001
Attorney Docket No. P21643.A04 (S 878/US)

: DECISION ON PETITION

This is a decision on the petition filed on October 28, 2003 by which petitioners request supervisory review and withdrawal of the a portion of the examiner's restriction requirement as promulgated on May 14, 2003 and made final on August 28, 2003. The petition is considered under 37 CFR 1.144, and no fee is required.

The petition is granted.

The restriction requirement in question is contested by petitioners with respect to claim groupings I, II and III. Inspection of the record shows that the examiner regards claim groupings I and II as being directed to "subcombinations usable together in a single combination", a type of "distinct inventions" discussed at MPEP 806.05(d). (See paper No. 6, page 3, paragraph 2.) Inspection of the record further shows that the examiner regards claim groupings I and III as being "unrelated" inventions. (See paper No. 6, page 3, paragraph 3.)

Claim 1 is a member of claim grouping I, and reads:

1. A sole for a boot, especially a sports boot, said sole comprising:
   a front portion and a rear portion more rigid in longitudinal bending than the front portion,
   at least one reinforcement in said portions,

   where:
   the front portion comprises a front half-sole affixed to the reinforcement;
   the rear portion comprises a rear half-sole affixed to the reinforcement; and
   the front and rear half-soles are assembled to one another in a junction zone, preferably, by cementing and/or riveting and/or welding.

Claim 8 is a member of claim grouping II, and reads:

8. A sole according to claim 1, wherein at least one of its front or rear portions is designed to cooperate with a sports apparatus.

Claim 12 is a member of claim grouping III, and reads:

12. A sole according to claim 1, wherein at least one of the front or rear (preferably front) half-soles is duplicate molded on the reinforcement, this duplicate molding being preferably selected from the moldable plastic materials, reinforced or non-reinforced, and having appropriate mechanical qualities for rigidity in the rear portion and flexibility in the front portion.

For the reasons set forth by petitioners, it is clear that the restriction requirement, whether as originally promulgated or as made final, is fundamentally flawed with respect to claim groupings I, II and III and is not in accordance with Office practice.

In accordance with petitioners' disclosed invention, claims 1 and 8 do not define subcombinations useable together. There is no disclosed invention comprising two soles, each formed from a front and rear half-sole and each having a reinforcement, with one sole having an element designed to cooperate with a

sports apparatus. The disclosed invention is a sole for boot that is formed of front and rear half-soles, each affixed to a reinforcement and to each other. According to the disclosures, the devices defined by claims 1 and 8 actually are related as subcombination/combination. However, the examiner's restriction requirement does not address the issue of whether, as claimed, these devices are distinct inventions in accordance with the instructions of MPEP 806.05(c).

With respect to the determination by the examiner that claims 1 and 12 define "unrelated" inventions, the examiner's citation of MPEP 806.04 and 808.01 as describing "unrelated inventions" may well be accurate, but the examiner's application of the teachings of these sections is not. The examiner's conclusory statements (paper No. 6, page 3, paragraph 3) simply are not supported by a reading of the disclosure. Claim 1, as reproduced above, defines a sole formed from two half-soles that are assembled to each other by a variety of techniques, and which are each attached to a reinforcement. Claim 12 merely requires that the manner in which at least one of the half-sole is attached to the reinforcement is that the half-sole is "duplicate molded on the reinforcement." See also the disclosure bridging pages 27 and 28 of petitioners' specification. The undersigned can discern nothing in the examiner's rationale supporting the restriction requirement which explains why the sole defined in claim 1 cannot be precisely the sole defined in claim 12. Clearly, the devices of claims 1 and 12 are not "unrelated" in the manner contemplated by MPEP 806.04, as a comparison of the examples in MPEP 806.04 with claims 1 and 12 clearly reveals.

In summary, the examiner's restriction requirement is clearly erroneous with respect to claim groupings I, II and III, and is hereby vacated and withdrawn. The application is being remanded to the Supervisory Applications Examiner of Art Unit 3728 with instructions to have the examiner take action not inconsistent with this decision. It appears to the undersigned that such action should take the form of examining the claims recited in claim groupings I, II and III.

PETITION GRANTED.

E. Rollins-Cross, Director, Patent
Examining Groups 3710 and 3720

Greenblum & Bernstein, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191

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OFFICE OF PETITIONS

STAAS & HALSEY, LLP
SUITE 700
1201 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

In re Patent No. 6,738,179	:	
Issue Date: May 18, 2004	:	
Application No. 09/994,790	:	ON PETITION
Filed: November 28, 2001	:	
Attorney Docket No. 837.1975	:	

This is a decision on the petition under 37 CFR 1.182, filed March 23, 2007, requesting issuance of a duplicate Letters Patent for the above-identified patent.

The petition is **granted**.

The Publishing Division is directed to issue duplicate Letters Patent.

As authorized, the $400 fee for the petition under 37 CFR 1.182 has been charged to petitioner's deposit account.

A copy of this decision is being forwarded to Publishing Division for issuance of the duplicate Letters Patent. The patent file is being forwarded to the Files Repository.

Any questions concerning this matter may be directed to the undersigned at (571) 272-3226. Any questions concerning issuance of the duplicate Letters Patent should be directed to Krystal Paige at (703) 308-9250 ext 139.

Andrea Smith
Petitions Examiner
Office of Petitions

cc: Krystal Paige, P/OPPD, South Tower 8th Floor, Room C-32 (FAX 571-270-9937)

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Paper No. 4

MAIL

JAN 22 2002

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

GREENBLUM & BERNSTEIN, P.L.C.
1941 ROLAND CLARKE PLACE
RESTON VA 20191

In re Application of :
Kasahara et al. :
Application No. 09/994,794 :
Filed: November 28, 2001 :
For: DISPLAY DEVICE AND LUMINANCE CONTROL METHOD THEREFOR

DECISION ON PETITION TO MAKE SPECIAL

This is a decision on the Petition under MPEP § 708.02, filed November 28, 2001, 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(I), (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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

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Washington, D.C. 20231
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Paper No. 7

Ronald L. Grudziecki
BURNS, DOANE, SWECKER & MATHIS, L.L.P.
P.O. Box 1404
Alexandria, VA 22313-1401

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OFFICE OF PETITIONS

In re Application of
Johansson, et al.
Application No. 09/994,803
Filed: November 28, 2001
Atty Docket No. 040000-854

DECISION ON PETITION

This is a decision on the petition filed February 4, 2002[1], entitled "Petition to the Commissioner for Acceptance of Resubmitted Formal Drawings and Request that A Filing Date of November 28, 2001 be Accorded Under 37 C.F.R. §§1.53(e) and 1.17(h), along with a Request for Refund."

Application papers in the above-identified application were filed on November 28, 2001. However, on December 10, 2001, the Initial Patent Examination Division (IPED) mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the application was deposited without drawings.

In reply, applicants timely filed the instant petition. Therein, applicants respectively submit that 13 sheets of drawings were submitted with patent application no. 09/994,803 on November 28, 2001 and respectively request that the original filing date of November 28, 2001 be accorded to the patent application. In support thereof, petitioner submitted *inter alia* a copy of the front and back of their return postcard receipt listing among the enclosures "☒Drawings (Fig(s). 1- 8E, 13 pgs.)," identifying this application by assignment of serial number 09/994,803, bearing a United States Patent and Trademark Office receipt date-stamp of November 28, 2001, and lacking any notation of non-receipt of any item listed. On petition, applicants submit a copy of the 13 sheets of drawings as they maintain they were filed on November 28, 2001.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. Applicant has shown that the application as filed on November 28, 2001 included thirteen sheets of formal drawings, and thus, is entitled to a filing date of November 28, 2001.

In view thereof, the petition is **GRANTED**.

---

[1] This is a duplicate of the petition filed December 28, 2001, but not received in the Office of Petitions until April 15, 2002.

Given the basis for granting the petition, the petition fee has been refunded to Deposit Account No. 02-4800 as requested.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of November 28, 2001, using the application papers received in the Office on that date and the thirteen (13) sheets of formal drawings resubmitted on petition filed February 4, 2002.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Antonelli, Terry, Stout & Kraus, LLP
1300 North Seventeenth Street
Suite 1800
Arlington, VA 22209-9889

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Office of the Director
Group 3600

In re application of
Anthony v. Purgliese, III et al.
Application No. 09/994,805 :
Filed: November 28, 2001 :
For: SYSTEM AND METHOD FOR DISPLAYING AND SELLING GOODS AND SERVICES IN A RETAIL ENVIRONMENT EMPLOYING ELECTRONIC SHOPPER AIDS :

DECISION ON REQUEST FOR WITHDRAWAL OF ATTORNEY

This is a decision on the request filed on May 20, 2003, under 37 CFR 1.36 and MPEP 402.06, requesting permission to withdraw as the attorney of record in the above-identified application.

The request is **NOT APPROVED**.

Under 37 CFR 1.36 an attorney may withdraw only upon application to and approval by the Commissioner. It should be noted that a withdrawal is effective when approved, not when filed. Besides giving due notice to his or her client and delivering to the client all papers and property to which the client is entitled as specified under 37 CFR 10.40, approval of such a request requires that the following conditions be met:

A) Each attorney of record must sign the notice of withdrawal, or the notice must contain a clear indication of one attorney signing on behalf of another, because the Office does not recognize law firms;

B) A proper reason for the withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided; and

C) If withdrawal is requested in accordance with 37 CFR 10.40(c) above, there must be at least 30 days between approval of the withdrawal and the later of the expiration date of a time period for reply or the expiration date of the period which can be obtained by a petition and fee for extension of time under 37 CFR 1.136(a).

The request to withdraw as attorney is not accepted in the above-identified application because the request lacks condition B) above.

As to condition B), a proper reason for withdrawal as enumerated in 37 CFR 10.40(b) or subsection (1)-(6) of 37 CFR 10.40(c) must be provided. Petitioner stated that that Applicants "have instructed that the further handling/responsibility for the above-identified application should be transferred to the following correspondence address:". This is not clear to mean the same "The practitioner is discharged by the client" as one of the enumerated reasons.

Kenneth J. Dorner
Special Programs Examiner
Patent Technology Center 3600
(703) 308-0866
Facsimile No.: (703) 605-0586

KJD/dxn: 7/8/03

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WOMBLE CARLYLE SANDRIGE & RICE PLLC
PO BOX 70357-0037
ATLANTA, GA 30357-0037

In re Application of :
PUGLIESE, III, et al. :
Application No. 09/994,805 : DECISION ON PETITION
Filed: November 28, 2001 : TO WITHDRAW
Attorney Docket No. 954.39363X00 : FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed September 21, 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 John J. Timar on behalf of all attorneys of record. All attorneys/agents associated have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

All future correspondence will be directed to the first named inventor Anthony V. Pugliese, III at the address indicated below.

There is an outstanding Office action mailed January 17, 2006 that requires a reply from the applicant. Telephone inquiries concerning this decision should be directed to the undersigned at 571-272-7253.

Monica A. Graves
Petitions Examiner
Office of Petitions

cc: **ANTHONY V. PUGLIESE III**
1400 SPANISH RIVER ROAD
BOCA RATON, FL 33432

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/994,805	11/28/2001	Anthony V. Pugliese III	954.39363X00

CONFIRMATION NO. 8808

OC000000021408856

John J. Tmar
Womble Carlyle Sandridge & Rice, PLLC
P.O.Box 70357-0037
Atlanta,, GA 30357-0037

Date Mailed: 11/30/2006

NOTICE REGARDING CHANGE OF POWER OF ATTORNEY

This is in response to the Power of Attorney filed 09/21/2006.

- The withdrawal as attorney in this application has been accepted. Future correspondence will be mailed to the new address of record. 37 CFR 1.33.

MONICA A GRAVES
OP (571) 272-7253

FORMER ATTORNEY/AGENT COPY

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dss

Mailed: 1-23-06

In re application of
Katsukuki Morii et al. : DECISION ON
Serial No.09/994,816 : PETITION
Filed: November 28, 2001 :
For: ORGANIC ELECTRO-LUMINESCENT DEVICE, MANUFACTURING METHOD FOR THE SAME, AND ELECTRONIC EQUIPMENT

This is a response to the PETITION UNDER 37 C.F.R. §1.181(a) TO WITHDRAW HOLDING OF ABANDONMENT, filed August 30, 2005. The petition requests that the abandonment, as set forth in the Notice of Abandonment mailed August 22, 2005 , be withdrawn since the applicant did not receive the Office letter mailed February 04, 2005.

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. A review of the petitioner's evidence indicates that the request has merit. The evidence presented is sufficient to establish that the applicant or any authorized representative of the applicant did not receive the Office letter mailed February 04, 2005. The evidence provided includes a statement by the petitioner that the Office letter mailed February 04, 2005 was not received, a statement that a search of the file and docket records was made, and a statement that the search revealed the Office letter mailed February 04, 2005 was not received. Also provided is a copy of the attorney's application docket records where the Office letter mailed February 04, 2005 would have been posted had it been timely received.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed February 04, 2005 and restarting of the period of response from the remail date thereof.

The Petition is **GRANTED**.

Jacqueline M. Stone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Oliff & Berridge, PLC
P.O. Box 19928
Alexandria, VA 22320

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,860	11/28/2001	Ronald D. Blum	027001-000310US	9812

20350 7590 03/03/2010
TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER
BOECKMANN, JASON J

ART UNIT	PAPER NUMBER
3752	

MAIL DATE	DELIVERY MODE
03/03/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO CA 94111-3834

In re Application of:
BLUM, RONALD D. et al
Appl. No.: 09/994,860
Filed: Nov. 28, 2001
Attorney Docket No: 027001-000310US
For: METHOD AND APPARATUS FOR REDUCING THE INTENSITY OF HURRICANES AT SEA BY DEEP-WATER UPWELLING

: DECISION ON PETITION

This is a decision on the petition filed on February 16, 2010 by which petitioner requests supervisory review and withdrawal of the finality of the office action dated December 15, 2009. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is dismissed.

A review of the relevant prosecution history shows that the applicant filed an RCE on September 13, 2009 with only an addition of a new claim 37 which is directed to a distinct or independent invention (MPEP § 806.05h). The previous presented claims 1-17 and 33-36 under the previous final rejection of July 24, 2008 were not amended at all. The RCE of September 13, 2009 also includes IDS which contains sixteen published patents and applications and thirteen publications. The RCE was properly filed in accordance with the 35USC 132(b) and MPEP § 706.07(h). On December 15, 2009, the examiner issued a first Office action final rejection to the RCE. The examiner finally rejected claims 1-17 and 33-36 under applicable sections of 35 USC §101 and § 112. However, the examiner did withdraw the newly added claim 37 from consideration due to constructive non-elected invention under MPEP § 821.03. Moreover, under MPEP § 706.07(h), applicant cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the previously claimed and examined as a matter of right (i.e. applicant cannot switch inventions). The withdrawal of non-elected claim 37 is deemed proper. Upon further review of the final Office action of December 15, 2009, this final rejection is the first office action based on the same identical grounds of the previous final rejection of July 24, 2008. These two final rejections are almost verbatim. In response to the first final Office action mailed July 24, 2008, the applicant filed a Notice of Appeal and Appeal Brief on October 15, 2008. Subsequently, on January 9, 2009, the examiner issued an Examiner's Answer. Upon

receipt of a Reply Brief, on April 21, 2009, the examiner forwarded the case to the Board of Appeals and Interferences.

On February 16, 2010, petitioner filed the current petition requesting supervisory review of the propriety of the final rejection and withdrawal of the finality of the Office action dated December 15, 2009. The petitioner is of the opinion that first Office action final rejection of December 15, 2009 is improper under MPEP 706.07(b) because petitioner believes these sections of the MPEP provide a framework where new information may be submitted for consideration with an RCE, and the Office will not make final on the next Office Action after the submission of such information. Therefore, petitioner opines that the IDS submitted to the Office should be properly addressed in a non-final action and the finality of the rejection is improper on its face because the claims could not have been properly finally rejected on the grounds and art of record prior to the filing of the RCE, because the art of record with respect to the 101 and 112 rejections has changed based on Applicant's IDS, which contained references germane to the credible utility of the claimed subject matter.

Analysis of Application Record

The record shows that the examiner has determined that the submission and amendment of September 3, 2009 RCE did not add any new limitations to previously rejected claims 1-17 and 33-36. The unamended claims 1-17 and 33-36 remain directed to same invention with no change in scope of what was previously claimed. A comparison of the final Office action of December 15, 2009 and the previous final rejection of July 24, 2008 indicates that two final rejections are almost identical. In the final Office action of December 15, 2009, the examiner also considered the IDS filed with the RCE[1] and determined that the unamended claims 1-17 and 33-36 remain unpatentable for the same grounds of rejection under 35 USC 101 and 112. In particular, on page 7 of the final Office action of December 15, 2009, the examiner has determined that the claims 1-17 and 33-36 presented with the RCE were drawn to the same invention as claimed in the amendment filed on April 28, 2008 and that the claims could have been finally rejected on the same grounds previously of record. Based on the analysis of record, when the examiner promulgated the first Office action as final rejection of December 15, 2009, the conditions set forth in MPEP 706.07(b) were met. Thus, the examiner's final rejection after RCE based on the same grounds of rejection of record pursuant to MPEP § 706.07(b)[2] is proper.

---

[1] MPEP 706.07(h) states: The action immediately subsequent to the filing of an RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP §706.07(b) for making a first action final in a continuing application are met.

[2] MPEP 706.07(b), paragraph 2 states: The claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE (with a submission and fee under 37 CFR 1.114) where all the claims in the application after the entry of the submission under 37 CFR 1.114 (A) are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114, and (B) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE under 37 CFR 1.114.<

Petitioner's argument regarding the examiner's failure to consider the IDS filed with the RCE is incorrect. There is no evidence showing that the examiner has failed to consider the IDS filed by the applicant's. As to the contrary, the examiner in fact did consider the IDS filed with the RCE as evidenced by his initials on the IDS returned to the applicant in his final rejection of December 15, 2009. It appears form the record that the examiner has fully considered all sixteen published applications and patents, along with thirteen articles and publications in accordance with MPEP § 609 (see PTO Forms 1449). Petitioner fails to point out exactly which prior art reference(s) that the examiner has not considered and initialed. It is also noted that the applicant has failed to point out the relevance of each and every cited prior art references as listed on the Forms 1449 for the examiner to address and comment. Therefore, there is nothing for the examiner to agree and disagree with the cited prior art references. Since the examiner has considered and initialed the Forms 1449 pursuant to MPEP § 609, there is no need to further articulate any specific consideration of the same IDS. Again, it appears from the record that after the examiner has considered the cited prior art references as listed on the Forms 1449, the examiner remains convinced that the unamended claims 1-17 and 33-36 are still unpatentable under 35 USC § 101 and § 112. Since the IDS have been made of record in this case and there is no change of rejections at all, the applicant may wish to re-instate the appeal process by filing a new notice of appeal and an appeal brief.

Conclusion

Based on the analysis of record, when the examiner promulgated the first office action final rejection of December 15, 2009, the conditions set forth in MPEP 706.07(b) were met. In particular, the unamended claims 1-17 and 33-36 in the amendment of September 3, 2009 in fact are directed to the same invention of the claims in the earlier amendment. The claims in the amendment of September 3, 2009 would have been properly finally rejected on the same grounds of record in the next Office action if they had been presented. Therefore, under MPEP 706.07(b) the first action final rejection appears to be proper.

For the foregoing reasons, it appears that the examiner's decision to make the Office action dated December 15, 2009 final was neither arbitrary nor capricious, and that the examiner's action was in accordance with the guidance set forth in MPEP 706.07. Accordingly, there appears to be no basis for granting the relief petitioner requests.

The application is being forwarded to the examiner via the Supervisory Patent Examiner of Art Unit 3752 awaiting for filing of notice of appeal and appeal brief. The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181".

Any inquiry regarding this decision should be directed to Henry Yuen, Special Programs Examiner, at (571) 272-4856.

The petition is DISMISSED.

Donald T. Hajec, Director
Technology Center 3700

#4

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
COPY MAILED

JUN 06 2002

OFFICE OF PETITIONS

SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, NW
Washington DC 20037-3213

In re Application of
Nishikawa, *et al.*
Application No. 09/994,891
Filed: November 28, 2001
Attorney Docket No. Q66604

DECISION GRANTING PETITION

This is a decision on the February 8, 2002 petition requesting that the above-identified application be accorded a filing date of November 28, 2001.

The United States Patent and Trademark Office (hereinafter "USPTO") received this application on November 28, 2001. However, on December 11, 2001, the Office of Initial Patent Examination (hereinafter "OIPE") mailed a "Notice Of Incomplete Nonprovisional Application" (hereinafter "notice") noting that the application had not been granted a filing date due to Applicant's failure to include drawings in this application. The notice further stated that the filing date would be the date of receipt of the omitted items unless a petition was filed that successfully showed that the missing item(s) had been included with the application. A two month deadline was set for replying.

Petitioner responded with the February 8, 2002 filing of this petition. The petition included a copy of a return receipt postcard. The copy of applicants' postcard receipt indicates receipt of four (4) sheets of drawings with the rest of the application on November 28, 2001.

In view of the above, it is concluded that the drawings were filed on November 28, 2001. Accordingly, *this petition is* ***granted***.

The $130.00 petition fee paid for this petition is accordingly unnecessary. As per Petitioner's request, this fee will be refunded to Petitioner's deposit account (DA# 19-4880).

The application is being returned to the Office of Initial Patent Examination for processing with a filing date of November 28, 2001 using the copies of the drawings supplied with the petition.

Any questions regarding this decision should be directed to Attorney Scott M. Ledford at (703) 306-5593.

Scott M. Ledford
Petitions Attorney
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

Beverly Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MICHAEL J. BELL
HOWREY SIMON ARNOLD & WHITE
BOX NO. 34
1299 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2402

COPY MAILED

MAR 29 2004

OFFICE OF PETITIONS

In re Application of :
Gregory S. Hamilton et al :
Application No. 09/994,927 :
Filed: November 28, 2001 :
Attorney Docket No. 03166.0029.NPUS02 :

ON PETITION

This is a decision on the petition under 37 CFR 1.313(b)(5), filed March 17, 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 March 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.

This matter is being referred to Technology Center AU 1626 for processing of the request for continued examination under 37 CFR 1.14.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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MICHAEL J. BELL
HOWREY SIMON ARNOLD & WHITE
BOX NO. 34
1299 PENNSYLVANIA AVENUE, NW
WASHINGTON, DC 20004-2402

COPY MAILED

MAR 29 2004

OFFICE OF PETITIONS

In re Application of
Gregory S. Hamilton et al
Application No. 09/994,927
Filed: November 28, 2001
Attorney Docket No. 03166.0029.NPUS02

ON PETITION

This is a decision on the petition under 37 CFR 1.313(b)(5), filed March 17, 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 March 11, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to Wan Laymon at (703) 306-5685.

This matter is being referred to Technology Center AU 1626 for processing of the request for continued examination under 37 CFR 1.14.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

---

[1] The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form **must** be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

FORD GLOBAL TECHNOLOGIES, INC.
ONE PARKLANE BOULEVARD
SUITE 600 - PARKLANE TOWERS EAST
DEARBORN MI 48126

COPY MAILED
NOV 1 3 2006
OFFICE OF PETITIONS

In re Application of :
Greenberg et al. :
Application No. 09/994,974 : ON PETITION
Filed: November 29, 2001 :
Attorney Docket Number: 200-1392

This is a decision on the petition under 37 CFR 1.137(b), filed August 1, 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 November 22, 2005. 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 February 23, 2006. A Notice of Abandonment was mailed on June 6, 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. 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 2600 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.

Charlema R. Grant
Petitions Attorney
Office of Petitions

cc: Jerome R. Drouillard
28333 Telegraph Road
Suite 250
Southfield, MI 48034

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. 13

TUNG & ASSOCIATES
Suite 120
838 W. Long Lake Road
Bloomfield, MI 48302

JAN 15 2004

In re Application of:
Ricky AMOS
Serial No.: 09/995,031
Filed: November 29, 2001
Attorney Docket No.: **YOR920010633US1**

DECISION ON PETITION

This is a decision in response to the communication filed June 23, 2003. The communication has been treated as a petition under 37 C.F.R. § 1.181, requesting entry of the After Final Amendment filed March 24, 2003.

The petition is **DENIED**.

BACKGROUND

A first Office action was mailed on August 12, 2002, each of the independent claims 1 and 10 were rejected under 35 USC § 102(b) as being anticipated by Noguchi et al. (US Patent No. 6,040,610). Claims 1 and 10 recites a limitation to a Markush grouping containing elements Re, Rh, Ir, Pt and Ru.

A response to the first Office action was submitted on November 18, 2002. In the response, applicant canceled member/element "Pt" from the Markush grouping in each of claims 1 and 10 to overcome the 35 USC § 102(b).

A second Office action was mailed on January 22, 2003, wherein each of independent claims 1 and 10 were again rejected under 35 USC § 102(e) as being anticipated by Maria et al. (Pub. No.: US 2001/0032995 A1), a prior art made of record by the examiner in the first Office action. This Office action was made final.

A proposed after final amendment was filed on March 24, 2003. This amendment proposes canceling member/elements "Ir" and "Ru" from the Markush grouping in each of independent claims 1 and 10 such that the only remaining members/elements within the grouping are "Re and Rh."

An Advisory Action was mailed April 3, 2003, wherein the examiner denied entry of the proposed after final amendment on the grounds that the proposed amendment(s) raise new issues that would require further consideration or search, and/or they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal. See M.P.E.P. § 714.13.

OPINION

In response to the first Office action, applicant could have canceled elements "Ru" and "Ir" from the Markush grouping in addition to canceling element "Pt" but chose not to do so. It appears from the record that applicant elected to delay canceling elements "Ru" and "Ir" until the Office action was made final. By waiting until the Office action is made final, applicant knew or should have known that entry of an amendment after final is not a matter of right and entry of such amendment is limited by the conditions set forth under 37 C.F.R. § 1.116 and M.P.E.P. § 1207. A reference anticipates a claimed invention if it discloses all the structures set forth in the claim(s) and at least one member/element within the Markush grouping. With respect to the Office action mailed on January 22, 2003, the reference to Maria et al. discloses all the structure set forth in each of independent claims 1 and 10 including at least one element "Ru" from the Markush grouping. Hence, the rejection of these claims under 35 USC § 102(e) is proper.

While the proposed canceling of elements "Ru" and Ir" in the after final amendment does not necessitate a new search by the examiner if it is entered, such entry would clearly raise new issues that will have to be considered by the examiner. Such new issues include a determination of whether and which elements of the Markush grouping in the prior art and the elements remaining in the claims are "equivalents," etc. Accordingly, the argument that the deletion of two elements "Ir" and "Ru" would reduce and simplify the issues for appeal is not convincing since such deletion also would clearly raise new issues. Pursuant to 37 CFR 1.116 and MPEP § 1207, and in view of the above discussions, the refusal of entry of the proposed after final amendment by the examiner is proper and will not be disturbed.

Any request for reconsideration and/or review of this decision must be filed within two months of the mail date of this decision to be considered timely.

The application is being forwarded to the examiner for prompt consideration of the appeal brief filed June 23, 2003.

Sharon Gibson, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

MICHAEL BEST & FRIEDRICH, LLP
100 E WISCONSIN AVENUE
MILWAUKEE WI 53202

In re Application of :
Roger Cook :
Application No. 09/995,052 : DECISION ON PETITION
Filed: November 27, 2001 :
Attorney Docket No. 06542/9015 :

This is a decision on the petition under 37 CFR 1.137(b), filed April 28, 2006, to revive the above-identified application.

This above-identified application became abandoned for failure to timely file a proper response to a final Office Action which was mailed on March 10, 2005. The final Office Action set a three (3) month shortened statutory period for reply. An amendment was filed on August 15, 2005 (certificate of mailing August 10, 2005) with a two month extension of time . An advisory action was mailed on September 9, 2005 indicating the August 15, 2005 amendment did not place the application in condition for allowance. Accordingly, this application became abandoned on August 11, 2005. A Notice of Abandonment was mailed on October 19, 2005.

The requirements for the filing of a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby **Granted**.

A three (3) month extension of time was requested. However, pursuant to 37 CFR §1.136, an extension of time must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988) Petitioner's six (6) month statutory period expired on September 10, 2005. Petitioner is ineligible for any extensions of time. Accordingly, the $570.00 will be refunded.

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 Petitioner herein was ever empowered to prosecute the instant application. If Petitioner desires to receive future correspondence regarding this application, the appropriate power of attorney documentation and change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.

This application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the application is again abandoned in favor of Continuation Application No. 11/223,763 filed on September 9, 2005.

This application is being forwarded to the files repository.

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: Michael B. McNeil
Liell & McNeil Attorneys PC
P.O. Box 2417
Bloomington, IN 47402

UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 11

ANSEL M. SCHWARTZ
SUITE 304
201 N. CRAIG STREET
PITTSBURGH, PA 15213

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DEC 2 9 2003

OFFICE OF PETITIONS

ON PETITION

In re Application of
Mako et al.
Application No. 09/995,077
Filed: November 26, 2001
Attorney Docket No. MAKO-8 CONT III

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 20, 2003, to revive the above-identified application.

The petition is **granted.**

This application became abandoned for failure to timely reply within three months to the final Office action mailed May 6, 2003. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, this application became abandoned on August 7, 2003.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b).

The file is now being forwarded to Technology Center 2800 for processing of the Request for Continued Examination under 37 CFR 1.114 filed with the instant petition.

Telephone inquiries should be directed to Paralegal Liana Chase at (703) 306-0482.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

OIPE
APR 0 4 2002
JC84

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Kunio Hori, et al.	**Examiner:**	Unassigned
Serial No.:	09/995,100	**Art Unit:**	2877
Filed:	November 27, 2001	**Docket:**	15111
For:	METHOD FOR DETERMING POLYMORPHISM	**Dated:**	April 1, 2002

RECEIVED
APR - 8 2002
TECHNOLOGY CENTER 2800

Assistant Commissioner for Patents
Washington, DC 20231

Response to Notice to Comply under 37 C.F.R.§1.821

Sir:

In response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures dated January 31, 2002 and in accordance with the provisions in 37 C.F.R. §1.821, Applicants submit herewith an intial paper and a initial computer readable copy of the Sequence Listing, along with a Statement Under 37 C.F.R. §1.821(f), stating that these copies are identical. A copy of the Notice to Comply is also enclosed.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231.

Dated: April 1, 2002

Michelle Mustafa

H:\work\1373\15111\MISC\15111.ntc.doc

Applicants respectfully submit that the content of the paper and computer copies of the sequence listing do not introduce new matter.

Respectfully submitted,

Peter I. Bernstein
Registration No. 43,497

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343

PIB:dg

2877

TRANSMITTAL LETTER (General - Patent Pending)	Docket No. 15111

In Re Application Of: **Kunio Hori, et al.**

OIPE JC87 APR 0 4 2002 PATENT & TRADEMARK OFFICE

Serial No.	Filing Date	Examiner	Group Art Unit
09/995,100	**November 27, 2001**	**Unassigned**	**2877**

Title:

METHOD FOR DETERMINING POLYMORPHISM

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

RECEIVED APR -8 2002 TECHNOLOGY CENTER 2800

Transmitted herewith is:

Response to Notice of Comply under 37 C.F.R. 1.821
Copy of Notice to Comply
Statement under 37 C.F.R. 1.821(f)
Initial Computer Readable Copy of Sequence Listing
Copy of Sequence Listing

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of is attached.
- ☒ The Assistant Commissioner is hereby authorized to charge and credit Deposit Account No. **19-1013/SSMP** as described below. A duplicate copy of this sheet is enclosed.
  - ☐ Charge the amount of
  - ☒ Credit any overpayment.
  - ☒ Charge any additional fee required.

Signature

Dated: **4/1/02 (Holiday)**

Peter I. Bernstein
Registration No. 43,497
SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Garden City, NY 11530
(516) 742-4343

I certify that this document and fee is being deposited on **April 1, 2002** with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Signature of Person Mailing Correspondence

Michelle Mustafa

Typed or Printed Name of Person Mailing Correspondence

PIB:dg
cc:

Copyright 1995 Legalsoft

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
09/995,100	11/27/2001	Kunio Hori	15111

OIPE JC97 APR 0 4 2002 PATENT & TRADEMARK OFFICE

CONFIRMATION NO. 3176

FORMALITIES LETTER

OC000000007395415

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530-0299

Date Mailed: 01/31/2002

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).

- This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment directing its entry into the application. Applicant must also provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- **For Rules Interpretation, call (703) 308-4216**
- **To Purchase PatentIn Software, call (703) 306-2600**
- **For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov**

RECEIVED APR - 8 2002 TECHNOLOGY CENTER 2800

A copy of this notice MUST be returned with the reply.

M. Mammal

JUN 07 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

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/995,100	11/27/2001	Kunio Hori	15111

CONFIRMATION NO. 3176

FORMALITIES LETTER

OC000000007985521

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, NY 11530-0299

Date Mailed: 04/30/2002

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

OIPE JC109
JUN 07 2002
PATENT & TRADEMARK OFFICE

COPY OF PAPERS
ORIGINALLY FILED

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Kunio Hori, et al.	**Examiner:**	Unassigned
Serial No.:	09/995,100	**Art Unit:**	2877
Filed:	November 27, 2001	**Docket:**	15111
For:	METHOD FOR DETERMING POLYMORPHISM	**Dated:**	June 3, 2002

Assistant Commissioner for Patents
Washington, DC 20231

RESPONSE TO NOTICE TO COMPLY UNDER 37 C.F.R.§1.821

Sir:

In response to the Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures dated April 30, 2002, and in accordance with the provisions in 37 C.F.R. §1.821, Applicants submit herewith a substitute paper and a substitute computer readable copy of the Sequence Listing, along with a Statement Under 37 C.F.R. §1.821(f), stating that these copies are identical. A copy of the Notice to Comply is also enclosed.

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, DC 20231.

Dated: June 3, 2002

Michelle Mustafa

Applicants respectfully submit that the content of the paper and computer copies of the sequence listing do not introduce new matter.

Respectfully submitted,

Peter I. Bernstein
Registration No. 43,497

Scully, Scott, Murphy & Presser
400 Garden City Plaza
Garden City, New York 11530
(516) 742-4343

PIB:dg

COPY OF PAPERS ORIGINALLY FILED

030

OIPE JC109 JUN 0 7 2002 PATENT & TRADEMARK OFFICE

TRANSMITTAL LETTER (General - Patent Pending)	Docket No. 15111

In Re Application Of: **Kunio Hori, et al.**

Serial No.	Filing Date	Examiner	Group Art Unit
09/995,100	**November 27, 2001**	**Unassigned**	**2877**

Title:

METHOD FOR DETERMINING POLYMORPHISM

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Response to Notice of Comply under 37 C.F.R. 1.821
Copy of Notice to Comply
Statement under 37 C.F.R. 1.821(f)
Substitute Computer Readable Copy of Sequence Listing
Substitute Copy of Sequence Listing

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of is attached.
- ☒ The Assistant Commissioner is hereby authorized to charge and credit Deposit Account No. **19-1013/SSMP** as described below. A duplicate copy of this sheet is enclosed.
  - ☐ Charge the amount of
  - ☒ Credit any overpayment.
  - ☒ Charge any additional fee required.

Signature

Dated: **June 3, 2002**

Peter I. Bernstein
Registration No. 43,497
SCULLY, SCOTT, MURPHY & PRESSER
400 Garden City Plaza
Garden City, NY 11530
(516) 742-4343

I certify that this document and fee is being deposited on **June 3, 2002** with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Signature of Person Mailing Correspondence

Michelle Mustafa

Typed or Printed Name of Person Mailing Correspondence

PIB:dg

cc:

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Dennis C. Bremer
Honeywell International, Inc.
101 Columbia Road
P.O. Box 2245
Morristown NJ 07962-2245

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JUL 09 2009

OFFICE OF PETITIONS

In re Application of	:	
James P. Conner	:	
Application No. 09/995,120	:	DECISION ON PETITION
Filed: November 27, 2001	:	TO MAKE SPECIAL UNDER
Attorney Docket No. HONEYWELL NO. H0003115	:	37 CFR 1.102(c)(2)
	:	

This is a decision on the petition under 37 CFR 1.102(c)(2)(iii), filed January 18, 2002, to make the above-identified application special based on the invention materially contributing to countering terrorism as set forth in M.P.E.P. § 708.02, Section XI.

The petition is **GRANTED**.

A grantable petition to make an application special under 37 CFR 1.102(c)(2)(iii) and MPEP § 708.02, Section XI: Inventions for Countering Terrorism, should state that special status is sought because the invention materially contributes to countering terrorism. International terrorism as defined in 18 U.S.C. 2331 includes:

> activities that - (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] (B) appear to be intended - (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by assassination or kidnapping...

If the disclosure it not clear on its face that the clamed invention is materially directed to countering terrorism, the petition must be accompanied by a statement by the applicant, assignee or a registered attorney/agent explaining how the materiality standard is met. The types of technology for countering terrorism could include, but are not limited to, systems for detecting/identifying explosives, aircraft sensors/security systems, and vehicular barricades/disabling systems. No fee is required.

The instant petition includes by preventing the completion of an aircraft hijacking where the hijacking is designed to alter the proper or planned destination of an aircraft. Accordingly, the above-identified application has been accorded "special" status.

Telephone inquiries concerning this decision should be directed to Ron Abelson at 571-272-3165 or the undersigned at 571-272-7099.

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 3641 for action on the merits commensurate with this decision.

David Bucci
Petitions Examiner
Office of Petitions

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Alexandria, VA 22313-1450
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Paper No. 8

Gray Cary Ware & Freidenrich, LLP
1221 South Mopac Expressway
Suite 400
Austin, TX 78746-6875

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FEB 19 2004

OFFICE OF PETITIONS

In re Application of
Albin Czernichowski
Application No. 09/995,125
Filed: November 27, 2001
Attorney Docket No. WES-105(US)

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 15, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner to the Non-Final Office action mailed May 7, 2003, which set a period for reply of three (3) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136 have been obtained. Accordingly, the above-identified application became abandoned on August 8, 2003.

The Revocation and Power of Attorney submitted with the instant petition appears to be on behalf of the assignee; however, the Revocation and Power of Attorney does not comply with 37 CFR 3.73(b). 37 CFR 3.73(b) provides that: (1) The Revocation and Power of Attorney be accompanied by documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment) be provided or a statement specifying where documentary evidence of a chain of title from the original owner to the assignee is recorded in the assignment records of the Office (e.g., reel and frame number). See MPEP § 402.07.

The application file is being forwarded to Technology Center AU 2821 for further processing.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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RISSMAN JOBSE HENDRICKS & OLIVERIO, LLP
ONE STATE STREET
SUITE 800
BOSTON, MA 02109

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OFFICE OF PETITIONS

In re Application of	:	
Steven L. Rohall, et al.	:	
Application No. 09/995,151	:	DECISION ON PETITION
Filed: November 21, 2001	:	TO WITHDRAW
Attorney Docket No. 260-137	:	FROM RECORD
	:	

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b) filed June 26, 2007.

The request is **DISMISSED** as moot.

A review of the file record indicates that the power of attorney to Rissman, Jobse, Hendricks & Oliverio, LLP has been revoked by the assignee of the patent application on June 26, 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 undersigned at 571-272-1642.

April M. Wise
Petitions Examiner
Office of Petitions

cc: DAVID A. DAGG, ESQ.
MCGUINNESS & MANARAS, LLP
125 NAGOG PARK DRIVE
ACTON, MA 01720-3451

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Mailed : OCT - 8 2003

VJ
Paper Number 8

In re Application of		:	DECISION
Bank et al.		:	ON PETITION
Serial No.:	09/995,158	:	
Filed :	November 27, 2001	:	
For:	Structural Reinforcement	:	
	Using Composite Strips	:	

This is a decision on a petition under 37 CFR 1.144 filed August 7, 2003 requesting a review of a restriction requirement as set forth in the Office action mailed April 9, 2003 and made final in the Office action mailed July 17, 2003.

That restriction requirement involved two groups as follows: Group I, claims 1-13, 19 and 20, drawn to an elongated structural reinforcing strip and a reinforced structure and Group II, claims 14-18, drawn to a method of reinforcing a structure.

It is noted that in a restriction requirement, the initial burden is on the Office to establish a *prima facie* case that (a) the claimed inventions are independent or distinct and (b) there would be a serious or undue burden on the examiner if restriction were not required. See MPEP 803.

With respect to (a) above, the examiner's basis for the restriction was Process of making and Product made (MPEP 806.05(f)). And, with respect to (b) above, it was indicated that the inventions had acquired a separate status in the art as shown by their different classification. See page 2 of the action mailed April 29, 2003.

In a response filed April 24, 2003, the applicants elected the invention of Group I with traverse.

The applicants' principal arguments are as follows:

(i) Separate classification does not "automatically provide evidence of a serious burden." The applicants point out that since there is "substantial overlap" between the limitations in claims 1 and 19 of Group I and claim 14 of Group II, there cannot be a serious burden. See page 3 of the petition.

(ii) The examiner failed to establish the independence or distinctness of the inventions because the examiner's rationale involving metallic fibers in a composite material (see the action mailed April 29, 2003) is "either inapposite or misunderstood." See page 4 of the petition.

(iii) Independent claims 1, 14 and 19 in the present application are linked i.e. they are not distinct. See page 4 of the petition.

With respect to applicants' argument (i), it is observed that claims 1, 14 and 19 cited by applicants as having a substantial overlap are, in fact, the independent claims, and just these, in both Groups. While applicants' argument is valid with respect to the independent claims, however, it is improper to exclude the dependent claims from the picture since these claims, in fact, form an inseparable part of the restriction requirement. Thus, attention is drawn to dependent claims 15-18 of non-elected Group II which incorporate various limitations such as a process for inserting fasteners by detonating a charge, prior formation of aperture, providing a compressible cushion and applying an adhesive between the strip and the surface of a structure. It is noted that these limitations are not to be found in any of the claims of the elected Group I. Because the applicants failed to address the limitations of the dependent claims, their argument relating to substantial overlap is incomplete as well as incorrect and is, therefore, unpersuasive. Hence, the applicants have not overcome the presumption that there would be a serious or undue burden to search and examine <u>all</u> the claims.

With respect to applicants' argument (ii), it is noted that under MPEP 806.05(f) the examiner is required to state that either the claimed process can be used to a materially different product or that a materially different process can yield the claimed product. However, the examiner is not obligated to provide documentation. In the action mailed April 24, 2003, the examiner set forth a materially different product, such as one involving metallic fibers, and in the action mailed July 17, 2003 the examiner described a materially different process such as one involving placing a strip upon a surface that already has fasteners. Applicants' argument that the examiner's rationale is "inapposite" (i.e. not pertinent) is based on the fact that the independent claims 1, 14 and 19 in the present application are, apparently, not limited to metallic fibers only. However, this argument is not persuasive because the applicants have ignored the dependent claims, such as claim 11 and 12, which specifically recite non-metallic fibers. In challenging the propriety of a restriction requirement, the applicants must address the totality of claims as encompassed by the restriction. Furthermore, the applicants have not addressed the examiner's position as set forth in the action mailed July 17, 2003.

With respect to applicants' argument (iii), as pointed out previously, the applicants' arguments are again improperly confined to the independent claims only as opposed to addressing all claims that are included in the restriction requirement. When the dependent claims, such as the ones cited above, are taken into account, it is evident that the claims are not linked contrary to applicants' position.

In view of the above discussion, having weighed both the examiner's position and the applicants' arguments, it is concluded that, on the balance, the restriction is proper.

Applicants are advised that, in the event that the elected product claims become allowable, then, provided that the non-elected process claims are amended so as to depend from or otherwise include all the limitations of the allowable product claim, then such process claims will be rejoined with the allowable product claims consistent with the requirement for rejoinder set forth in MPEP 821.04.

The petition is DENIED.

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Intellectual Property Department
DEWITT ROSS & STEVENS S.C.
Firstar Financial Centre
8000 Excelsior Drive Suite 401
Madison WI 53717-1914

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BRISTOL-MYERS SQUIBB COMPANY
P O BOX 4000
PRINCETON, NJ 08543-4000

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JUN 13 2005

OFFICE OF PETITIONS

In re Application of	:	
James R. McCarthy	:	
Application No. 09/995,159	:	DECISION GRANTING PETITION
Filed: November 27, 2001	:	UNDER 37 CFR 1.137(b)
Atty Docket No. PH-7345-A/BMS-0891	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 15, 2004, 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 July 20, 2004, as required by the Notice of Allowance and Fee(s) Due, mailed April 20, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of the issue and publication fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the issue and publication fees are accepted as having been unintentionally delayed.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.

The matter is being referred to Publishing Division.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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WORLDCOM, INC.
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET, NW
WASHINGTON, DC 20036

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AUG 2 9 2002

OFFICE OF PETITIONS

In re Application of
Terry Knoblock, Gregory G. Carlson,
Mike Golobay and Willis Mason
Application No. 09/995,193
Filed: November 27, 2001
Title: METHOD, SYSTEM AND PROGRAM PRODUCT THAT UTILIZE A HIERARCHICAL CONCEPTUAL FRAMEWORK TO MODEL AN ENVIRONMENT CONTAINING A COLLECTION OF ITEMS

: DECISION GRANTING PETITION
: UNDER 37 CFR 1.47(a)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed April 15, 2002.

The petition is **granted**.

Petitioner has shown that the non-signing inventor has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(a). This application is hereby accorded Rule 1.47(a) status. As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the Declaration. Notice of the filing of this application will also be published in the Official Gazette.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Edward Tannouse at (703) 306-9200.

Edward J. Tannouse
Senior Petitions Attorney
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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MIKE GOLOBAY
3733 BLUE TRACE LANE
DALLAS, TX 75244

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AUG 29 2002
OFFICE OF PETITIONS

In re Application of
Terry Knoblock, Gregory G. Carlson, Mike Golobay and Willis Mason
Application No. 09/995,193
Filed: November 27, 2001
Title: METHOD, SYSTEM AND PROGRAM PRODUCT THAT UTILIZE A HIERARCHICAL CONCEPTUAL FRAMEWORK TO MODEL AN ENVIRONMENT CONTAINING A COLLECTION OF ITEMS

Dear MIKE GOLOBAY:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 116 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Edward Tannouse at (703) 306-9200. 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).

Edward J. Tannouse
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

WORLDCOM, INC.
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET, NW
WASHINGTON, DC 20036

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WORLDCOM, INC.
TECHNOLOGY LAW DEPARTMENT
1133 19TH STREET NW
WASHINGTON DC 20036

(For Petitioner)

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OFFICE OF PETITIONS

In re Application of
Knoblock, R. T., et. al.
Application No. 09/995,193
Filed: November 27, 2001
For: METHOD, SYSTEM AND PROGRAM PRODUCT THAT UTILIZE A HIERARCHICAL CONCEPTUAL FRAMEWORK TO MODEL AN ENVIRONMENT CONTAINING A COLLECTION OF ITEMS

: DECISION
: DISMISSING
: PETITION
:

This is in response to the petition filed September 9, 2002, by Brian C. Oakes on behalf of WorldCom, Inc. and MCI Communications Corp. requesting that the inventor, Mike Galobay, be excluded from access to the above referenced application.

The petition is **DISMISSED**.

The petition indicates that a copy of Mr. Galobay's employment agreement with MCI Communications Corp. has been recorded with the Office. The petition also indicates that assignment documents executed by the other inventors have been recorded with the Office.

The assignee of record of the entire interest may request that the inventor be prevented from obtaining access to an application file. See MPEP § 106.

It is clear from the facts alleged in the petition that WorldCom is not the assignee of record of the entire right, title and interest in the above referenced application. The petition is Dismissed until petitioner establishes that WorldCom, Inc. is the assignee of record of the entire right, title and interest in the above referenced application.

Any renewed request must meet the requirements for establishing the right of an assignee to take action as required by 37 CFR §3.73(b). The ownership statement must be signed by someone authorized to act on behalf of the assignee. A power of attorney to prosecute a patent application is not sufficient to authorize signing a statement under 37 CFR § 3.73(b). See MPEP § 324.

The original basis for withholding access to a patent application is that an inventor who has assigned his interest has no basis in reviewing the prosecution. Even where an inventor has no ownership interest, some inventors may have a continued financial interest, e.g., if he is to receive a bonus if the patent issues, or personal interest, e.g., where he would like to add the patent to his resume. In this application given that WorldCom, Inc. has not established a 100% interest, and given that the non-signing inventor will not be allowed to prosecute application, and there is no harm to his continued access, it is not appropriate to grant the petition at this time.

Any 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) 872-9005 Attn: Office Patent Legal Administration/Michael L. Lewis
By hand:	Crystal Plaza 4, CP4-3C23 2201 South Clark Place Arlington, VA

Telephone inquiries should be directed to Michael L. Lewis at (703) 306-5585.

Karin Ferriter

Karin Ferriter
Senior Legal Advisor
Office Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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P.O. Box 1450
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MCI, Inc.
1133 19TH STREET NW
WASHINGTON, DC 20036

(for assignee)

In re Application of
Knoblock, R. T., et al.
Appl. No.: 09/995,193
Filing Date: November 27, 2001
U.S. Publication No.: US 2003/0004925 A1
Pub. Date: January 2, 2003
U.S. Patent No.: 6,952,705 B2
Issue Date: October 4, 2005
Title: METHOD, SYSTEM AND PROGRAM PRODUCT THAT UTILIZE A HIERARCHICAL CONCEPTUAL FRAMEWORK TO MODEL AN ENVIRONMENT CONTAINING A COLLECTION OF ITEMS

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OFFICE OF PETITIONS

This is in response to the "RENEWED PETITION FOR CONTROL OF ACCESS TO APPLICATION BY ASSIGNEE IN ACCORDANCE WITH MPEP 106" which was received on September 8, 2004, for the above-identified application.

The petition is before the Office of Patent Legal Administration for decision.

The petition is **DISMISSED as moot.**

DECISION

MPEP § 106 states:

The assignee of record of the entire interest in an application may intervene in the prosecution of the application, appointing an attorney or agent of his or her own choice. See 37 CFR 3.71. Such intervention, however, does not exclude the applicant from access to the application to see that it is being prosecuted properly, unless the assignee makes specific request to that effect. Any request to prevent the inventor from obtaining access to the file should be filed as a separate paper, 37 CFR 1.4(c), and should be directed to the Office of Petitions. If the request is granted, the inventor will be informed that he or she will only be permitted to inspect the application on sufficient showing why such inspection is necessary to conserve his or her rights, *In re The Kellogg Switchboard & Supply Company,* 1906 C.D. 274 (Comm'r Pat. 1906). *Of course, after the application has published pursuant to 35 U.S.C. 122(b), the application will be available to the public and any restriction on the inventor to access his or her application previously granted will no longer be in effect.* (emphasis added)

37 C.F.R. 1.11(a) Files Open to the Public states:

(a) The specification, drawings, and all papers relating to the file of: A published application; ***a patent;*** or a statutory invention registration *are open to inspection by the public, and copies may be obtained upon the payment of the fee set forth in § 1.19 (b)(2).* If an application was published in redacted form pursuant to § 1.217, the complete file wrapper and contents of the patent application will not be available if: The requirements of paragraphs (d)(1), (d)(2), and (d)(3) of § 1.217 have been met in the application; and the application is still pending. (emphasis added)

Therefore, since the application has already published as U.S. Publication No.: US 2003/0004925A1 on January 2, 2003 and issued as US Patent No. 6952705 B2 on October 4, 2005 the request is deemed moot.

CONCLUSION

1. The petition is **DISMISSED as moot.**

2. Any further communication as to the merits of the case should be directed to the examiner of record.

3. Inquiries relating to this matter may be directed to Joseph F. Weiss, Jr. at (571) 272-7759.

HIRAM H. BERNSTEIN
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
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Patent No. : 6974808 B2
Ser. No. : 09/995,195
Inventor(s) : MCCARTHY, JAMES R.
Issued : 12/13/05
Title : **CRF RECEPTOR ANTAGONISTS AND METHODS RELATING THERETO**
Docket No. : **PH-7345-A**

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction for the above-identified patent under the provisions of Rule(s) 1.322 and/or 1.323.

Assignees' names and addresses (assignment data) printed in a patent, are based *solely* on information supplied in the appropriate space for identifying the assignment data, i.e., item 3 of the Issue Fee Transmittal Form PTOL-85B. Granting of a request under 37 CFR 3.81(b) is required to correct applicant's error providing ***incorrect or erroneous*** assignment data, *before* issuance of a Certificate of Correction, under 37 CFR 1.323 *(see Manual of Patent Examining Procedures (M.P.E.P) Chp.1400, sect. 1481).* This procedure is required *at any time after the issue fee is paid*, including after issuance of the patent.

In view of the foregoing, your request, in this mater, is hereby denied again.

A request to correct the Assignee under 37 CFR 3.81(b) should include:

A. **the processing fee set forth in 37 CFR 1.117(h) (currently $130);**
B. a statement that the failure to include the correct assignee name on the PTOL-85B was inadvertent; and
C. a copy of the Notice of Recordation of Assignment Document, reflecting the reel and frame number where the assignment(s) is recorded and/or reflecting proof of *the date* the assignment was submitted for recordation.

In the Request, Applicant(s) may request that the file be forwarded to Certificates of Correction Branch, for issuance of a Certificate of Correction, if the Request is granted.

Any request under 37 CFR 3.81(b) should be directed to the following address or facsimile number:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (703) 872-9306
ATTN: Office of Petitions

If a fee (currently $100) was previously submitted for consideration of a Request for Certificate of Correction, under CFR 1.323, to correct assignment data, , no additional fee is required.

Lamonte M. Newsome
For Cecelia Newman
Decisions & Certificates
of Correction Branch
(703) 308-9390 #112 or (703) 308-8309

BRISTOL - MYERS SQUIBB COMPANY
PATENT DEPARTMENT
PO BOX 4000
PRINCETON NJ 08543-4000

LMN

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COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 4

William Squire, Esq.
Carella, Byrne, Bain, Gilfillan, Cecchi,
Stewart & Olstein
6 Becker Farm Road
Roseland NJ 07068

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JUL 0 2 2002

OFFICE OF PETITIONS

In re Application of Andrew L. Pearlman Application No. 09/995,217 Filed: November 27, 2001 Attorney Docket No. 701030-15	: : : : :	DECISION DISMISSING PETITION

This is a decision on the petition filed March 5, 2002, requesting that the above-identified application be accorded a filing date of November 27, 2001, with Figures 4 and 5A as part of the original disclosure.

On November 27, 2001, applicant filed the above-identified application. However, on January 30, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)," stating that a filing date had been assigned in the application; however, Figures 4 and 5A described in the specification appeared to be omitted from the application.

In response, on March 5, 2002, applicant filed the present petition, the petition fee, and a copy of page 5/24 consisting of Figures 4 and 5A. Applicant stated that a total of 24 sheets of drawings were filed, including page 5 which contained Figures 4 and 5A, as evidenced by the enclosed date-stamped postcard receipt. Applicant submitted a copy of the date-stamped postcard receipt, indicating 24 sheets of drawings were filed on November 27, 2001.

A review of the record reveals that applicant did indeed file 24 sheets of drawings. However, the sheets of drawing contained duplicates of Figure 3B (page 4/24) with the application papers on November 27, 2001. Because Figures 4 and 5A were <u>not</u> present on November 27, 2001, the date the application was filed, Figures 4 and 5A <u>cannot</u> be considered a part of the original disclosure of the application. Accordingly, the application cannot be accorded the filing date of November 27, 2001, with the drawings of Figures 4 and 5A as a part of the original disclosure.

Accordingly, the petition is <u>dismissed</u>.

Figures 4 and 5A, submitted with the present petition on March 5, 2002, will not be entered or used during the prosecution of this application. However, applicants may resubmit the matter included in Figures 4 and 5A as an amendment for consideration by the examiner under Section 608.04 of the Manual of Patent Examining Procedure.

Any request for reconsideration should be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows and directed to the **Attention of Christina Tartera Donnell, Office of Petitions:**

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 CP4-3C23
2201 South Clark Place
Arlington, VA 22202

The application file will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of November 27, 2001, using only the 24 sheets of drawings submitted on that date, and indicating in the Office records that 24 sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Christina Tartera Donnell at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Beverly M. Flanagan

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

COPY OF PAPERS
ORIGINALLY FILED

3737

10-9-02

#6

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

OIPE JC26 JUL 23 2002 PATENT & TRADEMARK OFFICE

Applicant	:	Andrew L. Pearlman
Serial Number	:	09/995,217
Filed	:	November 27, 2001
For	:	Tissue Characterization Based on Impedance Images and on Impedance Measurements
Examiner	:	Not Assigned Art Unit: 3737
Attorney Docket No	:	701030-15

Box DAC
Attention Christina Tartera Donnell
Office of Petitions
Commissioner for Patents
Washington, DC 20231

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OCT 23 2002
OFFICE OF PETITIONS

RECEIVED
JUL 30 2002
TC 3700 MAIL ROOM

REQUEST FOR RECONSIDERATION OF DECISION ON PETITION

Sir:

Applicant petitioned the Commissioner to withdraw the Notice of Missing drawings as being in error. The Petition was dismissed in a paper mailed July 2, 2002.

Accompanying that petition was a copy of the missing drawing sheet which was filed on March 5, 2002. As a result, the application on March 5, 2002 was complete. Applicant respectfully requests that the application be accorded a file date of March 5, 2002 since on that date the missing drawing was filed and the application was complete as of then.

11/12/2002 AKELLEY 00000023 030678 09995217
01 FC:1460 130.00 CH

This application is a continuation of an application that was pending on March 5, 2002 and therefore the file date of March 5, 2002 is acceptable for the subject

continuation application to be accorded the priority date of the parent application serial no. 09/928,678 regardless the March 5, 2002 file date. No further papers are believed necessary for the application to be accorded the March 5, 2002 file date.

The Commissioner is respectfully requested to charge any fees due for this paper to deposit account 03-0678 or to credit any overpayments to this account.

FIRST CLASS CERTIFICATE

I hereby certify that this correspondence is being deposited on the date set forth below with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Box DAC
Attention Christina Tartera Donnell
Office of Petitions
Commissioner for Patents
Washington, DC 20231

July 19, 2002
William Squire **Date**

131127v2

Respectfully submitted,
Andrew Pearlman

by William Squire, Reg. No. 25,378
Attorney for Applicant
CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Six Becker Farm Road
Roseland, NJ 07068
Phone: 973-994-1700
Fax: 973-994-1744

O I P E JC11
AUG 2 8 2002
PATENT & TRADEMARK OFFICE

Please type a plus sign (+) inside this box → ☐

PTO/SB/05 (03-01)
Approved for use through 10/31/2002. OMB 0651-0032
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.

UTILITY PATENT APPLICATION TRANSMITTAL

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No.	
First Inventor	
Title	
Express Mail Label No.	

APPLICATION ELEMENTS

See MPEP chapter 600 concerning utility patent application contents.

ADDRESS TO: Assistant Commissioner for Patents
Box Patent Application
Washington, DC 20231

1. ☐ Fee Transmittal Form (e.g., PTO/SB/17) *(Submit an original and a duplicate for fee processing)*
2. ☐ Applicant claims small entity status. See 37 CFR 1.27.
3. ☐ Specification [*Total Pages* ☐] *(preferred arrangement set forth below)*
   - Descriptive title of the invention
   - Cross Reference to Related Applications
   - Statement Regarding Fed sponsored R & D
   - Reference to sequence listing, a table, or a computer program listing appendix
   - Background of the Invention
   - Brief Summary of the Invention
   - Brief Description of the Drawings *(if filed)*
   - Detailed Description
   - Claim(s)
   - Abstract of the Disclosure
4. ☐ Drawing(s) *(35 U.S.C. 113)* [*Total Sheets* ☐]
5. Oath or Declaration [*Total Pages* ☐]
   a. ☐ Newly executed (original or copy)
   b. ☐ Copy from a prior application (37 CFR 1.63 (d)) *(for continuation/divisional with Box 18 completed)*
      i. ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b).
6. ☐ Application Data Sheet. See 37 CFR 1.76
7. ☐ CD-ROM or CD-R in duplicate, large table or Computer Program *(Appendix)*
8. Nucleotide and/or Amino Acid Sequence Submission *(if applicable, all necessary)*
   a. ☐ Computer Readable Form (CRF)
   b. Specification Sequence Listing on:
      i. ☐ CD-ROM or CD-R (2 copies); or
      ii. ☐ paper
   c. ☐ Statements verifying identity of above copies

ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s))
10. ☐ 37 CFR 3.73(b) Statement *(when there is an assignee)* ☐ Power of Attorney
11. ☐ English Translation Document *(if applicable)*
12. ☐ Information Disclosure Statement (IDS)/PTO-1449 ☐ Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☐ Return Receipt Postcard (MPEP 503) *(Should be specifically itemized)*
15. ☐ Certified Copy of Priority Document(s) *(if foreign priority is claimed)*
16. ☐ Nonpublication Request under 35 U.S.C. 122 (b)(2)(B)(i). Applicant must attach form PTO/SB/35 or its equivalent.
17. ☐ Other: .....

18. If a CONTINUING APPLICATION, *check appropriate box, and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:*

☐ Continuation ☐ Divisional ☐ Continuation-in-part (CIP) of prior application No.:_____/_____

Prior application information: *Examiner* _____ *Group Art Unit:* _____

For CONTINUATION OR DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

☐ *Customer Number or Bar Code Label* *(Insert Customer No. or Attach bar code label here)* or ☐ *Correspondence address below*

Name					
Address					
City		*State*		*Zip Code*	
Country		*Telephone*		*Fax*	

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Name (Print/Type)		*Registration No. (Attorney/Agent)*	
Signature		*Date*	

Burden Hour Statement: This form is estimated to take 0.2 hours 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, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Box Patent Application, Washington, DC 20231.

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AUG 2 8 2002
PATENT & TRADEMARK OFFICE

3737

IN THE UNITED STATE PATENT AND TRADEMARK OFFICE

#7
10/21

attorney William Squire was contacted by Pet. Atty Donnell via phone.

Applicant	:	Andrew L. Pearlman
Serial Number	:	09/995,217
Filed	:	November 27, 2001
For	:	Tissue Characterization Based on Impedance Images and on Impedance Measurements
Examiner	:	Not Assigned Art Unit: 3737
Attorney Docket No	:	701030-15

Box DAC
Attention Christina Tartera Donnell
Office of Petitions
Commissioner for Patents
Washington, DC 20231

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SEP 1 7 2002
TECHNOLOGY CENTER R3700

Atty Squire asks that this paper be withdrawn from consideration on the merits see paper 8.
CTD
11/8/02

SECOND SUPPLEMENTAL REQUEST FOR RECONSIDERATION OF DECISION ON PETITION

Sir:

This paper is supplemental to applicant's prior Request for Reconsideration of the Dismissal of Applicant's petition to accord the applicant a file date of the original date accorded the above entitled application.

The above-entitled application is a continuation of a prior application and, by definition, incorporates all of the subject matter of the prior application as noted in applicant's prior supplemental request for reconsideration.

Enclosed is a copy of PTO form PTO/SB/05 (003-01), which expressly incorporates by reference all of the subject matter of the prior application. Applicant should be accorded his original file date of November 27, 2001.

The Notice of Missing Parts was in error and should not have issued.

It is respectfully requested that applicant be accorded the original file date of this application and the dismissal of applicant's petition be reversed and withdrawn.

The Commissioner is respectfully requested to charge any fees due for this paper to deposit account 03-0678 or to credit any overpayments to this account.

FIRST CLASS CERTIFICATE

I hereby certify that this correspondence is being deposited on the date set forth below with the U.S. Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Box DAC
Attention Christina Tartera Donnell
Office of Petitions
Commissioner for Patents
Washington, DC 20231

August 22, 2002
William Squire **Date**

#152094

Respectfully submitted,
Andrew Pearlman

by William Squire, Reg. No. 25,378
Attorney for Applicant
CARELLA, BYRNE, BAIN, GILFILLAN,
CECCHI, STEWART & OLSTEIN
Six Becker Farm Road
Roseland, NJ 07068
Phone: 973-994-1700
Fax: 973-994-1744
Email: wsquire@carellabyrne.com

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

William Squire, Esq.
Carella, Byrne, Bain, Gilfillan, Cecchi,
Stewart & Olstein
6 Becker Farm Road
Roseland NJ 07068

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NOV 1 2 2002

OFFICE OF PETITIONS

In re Application of	:	
Andrew L. Pearlman	:	DECISION GRANTING
Application No. 09/995,217	:	PETITION
Filed: March 5, 2002	:	
Attorney Docket No.701030-15	:	

This is a decision on the petition under 37 CFR 1.182, filed July 23, 2002, requesting that the above-identified application be accorded the later filing date of March 5, 2002, the date omitted Figures 4 and 5A were filed with the United States Patent and Trademark Office (Office).

On November 27, 2001, applicant deposited the above-identified application. However, on January 30, 2002, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s)," stating that the application had been accorded a filing date of November 27, 2001, and advising applicant that Figures 4 and 5A appeared to have been omitted from the application.

In the present application, applicant requests that the above-identified application be accorded the later filing date of March 5, 2002, the date omitted Figures 4 and 5A were filed with the Office. On August 28, 2002, applicant submitted a "Second Supplemental Request for Reconsideration of Decision on Petition." However, on November 8, 2002, William Squire, attorney of record, requested in a telephone conversation with Senior Petitions Attorney Christina Tartera Donnell, that the Office withdraw "Supplemental Request" from consideration on its merits. Therefore, the Office considered only the merits of the present petition submitted on July 23, 2002.

The petition is **granted**.

The $130.00 petition fee is being charged to Deposit Account No. 03-0678, as authorized by the petition.

The application is being returned to the Office of Initial Patent Examination for further processing and **to correct the filing date to March 5, 2002**, using Figures 1-3B and 5B-18C submitted on November 27, 2001, and Figures 4 and 5A filed on March 5, 2002. The record should indicate that 24 sheets of drawings were filed on March 5, 2002. Additionally, a copy of a corrected filing receipt should be mailed to applicant indicating the corrected filing date of March 5, 2002.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions
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. 10

GUNNER G. LEINBERG, ESQ.
NIXON PEABODY LLP
CLINTON SQUARE
P O BOX 31051
ROCHESTER, NY 14603-1051

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SEP 2 6 2003

OFFICE OF PETITIONS

In re Application of Lars Langemyr et al Application No. 09/995,222 Filed: November 27, 2001 Attorney Docket No. 801939/111	DECISION GRANTING PETITION UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed April 28, 2003, 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 November 27, 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.

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 2123 for examination in due course.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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Gunner G. Leinberg, Esq.
Nixon Peabody, LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14603-1051

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AUG 2 2 2007

OFFICE OF PETITIONS

In re Application of	:	
Lars Langemyr et al.	:	
Application No. 09/995,222	:	ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. 801939/111	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 8, 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 November 6, 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 February 7, 2007.

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 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. Although the RCE makes reference to an enclosed amendment, no amendment was found with the papers filed on May 8, 2007.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the $1020.00 extension of time fee submitted with the petition on May 8, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account. It is not clear why an extension of time was submitted with this application. The petitioner requested that this fee was to be applied to parent application number 09/479,119, which is not associated with this application.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

By 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 Kimberly Inabinet at (571) 272-4618.

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Gunner G. Leinberg, Esq.
Nixon Peabody, LLP
Clinton Square
P.O. Box 31051
Rochester, NY 14603-1051

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OCT 1 8 2007

OFFICE OF PETITIONS

In re Application of :
Lars Langemyr et al. :
Application No. 09/995,222 : DECISION ON PETITION
Filed: November 27, 2001 :
Attorney Docket No. 801939/111 :

This is a decision on the renewed petition under the unintentional provisions of 37 CFR 1.137(b), filed September 14, 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 November 6, 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 February 7, 2007. A Notice of Abandonment was mailed on August 30, 2007.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the required reply in the form of a request for continued examination, $ 790.00 filing fee, and submission as required by 37 CFR 1.114, (2) the petition fee of $1,500.00, and (3) a proper statement of unintentional delay.

Since the $1,500 fee for the petition and the $790.00 fee for the RCE were paid along with the petition filed May 8, 2007, no other fees are necessary. The fees in the amounts of $1,500.00 and $790.00 applied on September 14, 2007 will be credited to petitioner's deposit account.

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 $1,020 extension of time fee submitted with the petition on September 14, 2007 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 Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 2123 for processing the RCE and for appropriate action by the Examiner in the normal course of business on the reply received September 14, 2007.

Frances Hicks

Frances Hicks
Petitions Examiner
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFIC
WASHINGTON, D.C. 20231
www.uspto.go

COZEN O'CONNOR, P.C.
1900 MARKET STREET
PHILADELPHIA PA 19103-3508

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MAR 2 6 2003

OFFICE OF PETITIONS

Applicant: Chen et al
Appl. No.: 09/995,225
Filing Date: November 26, 2001
Title: ENDOGENOUS AND NON-ENDOGENOUS VERSIONS OF HUMAN G PROTEIN-COUPLED RECEPTORS
Attorney Docket No.: 21.US18,CIP/AREN-0380
Pub. No.: US 2002/0193584 A1
Pub. Date: December 19, 2002

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on February 14, 2003 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

The application is being forwarded to the Office of PreGrant Publication (PG-PUB) in Crystal Park 3-905 for further processing.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

LOUIS M. HEIDELBERGER
REED SMITH LLP
2500 ONE LIBERTY PLACE
1650 MARKET STREET
PHILADELPHIA, PA 19103

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SEP 01 2006

OFFICE OF PETITIONS

In re Patent No. 7,035,625	:	
Issue Date: April 25, 2006	:	
Application No. 09/995,250	:	NOTICE
Filed: November 27, 2001	:	
Attorney Docket No. 01-40236-US-C		

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

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper N .: _____

DATE : July 11, 2006

TO SPE OF : ART UNIT 1712

SUBJECT : Request for Certificate of Correction for Appl. No.: 09/995252 Patent No.: 6,669,851 B2

Please respond to this request for a certificate of correction within 7 days.

Please review the requested changes/corrections as shown in the **COCIN** document(s) in the IFW application image. No new matter should be introduced, nor should the scope or meaning of the claims be changed.

Please complete the response (see below) and forward the completed response to scanning using document code **COCX**.

Elisha Evans

Certificates of Correction Branch

703-308-9390 ext. 110

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

- ☑ **Approved** — All changes apply.
- ☐ **Approved in Part** — Specify below which changes **do not** apply.
- ☐ **Denied** — State the reasons for denial below.

Comments: _____

RANDY GULAKOWSKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

SPE

1712

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

ALLEN, DYER, DOPPELT,
MILBRATH & GILCHRIST, P.A.
255 SOUTH ORANGE AVENUE, SUITE 1401
PO BOX 3791
ORLANDO, FL 32802

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SEP 1 6 2002

OFFICE OF PETITIONS

In re Application of
Anderson et al.
Application No. 09/995,257
Filed: November 27, 2001
Attorney Docket No. 21652.CIP1

ON PETITION

This is a decision on the petition under 37 CFR 1.47, filed on June 19, 2002 (Certificate of Mailing date June 12, 2002), requesting that an unsigned "Declaration for Utility or Design Patent Application" ("6/19/02 Declaration") be accepted. This petition is being properly treated as a petition under 37 CFR 1.47(b).

The petition is **DISMISSED.**

This application is a continuation-in-part application (CIP) of application No. 09/210,358. Under 37 CFR 1.63(e), a newly executed oath or declaration would be required.

The 6/19/02 Declaration is not signed by any of the 3 named inventors for the invention claimed in this application. On December 12, 2001, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Missing Parts of Nonprovisional Application, giving Applicants an extendable 2-month period to submit, *inter alia*, a properly signed oath or declaration. The instant petition then followed,[1] alleging that all the named inventors refused to sign the CIP.

If none of the 3 joint-inventors would sign the application papers, 37 CFR 1.47(b) permits a person[2] to whom the inventors have assigned or agreed in writing to assign the invention, or who otherwise shows sufficient proprietary interest in the application,[3] to request to make the application on behalf of, and as agent for, the inventors.

The instant petition is not filed by the assignees of the entire interests to this application,[4] or one

---

[1] Including a request for a 4-month extension of time, and the requisite extension-of-time fee.

[2] A "person" can be a natural person or a legal entity such as a corporation; see MPEP section 409.03(b) (Aug. 2001).

[3] See also MPEP sections 409.03(b), (f) (Aug. 2001).

[4] See MPEP section 324 (Aug. 2001) re 37 CFR 3.71 ((a) [A]ssignees . . . may, **after becoming of record** . . . [prosecute] the application . . . © . . . **An assignee becomes of record** . . . **by filing a statement in compliance with 37 CFR 3.73(b) that is signed by a party authorized to act on behalf of the assignee**).

who otherwise shows sufficient proprietary interest in the application. The petition is thus dismissed and the 6/19/02 Declaration is not accepted.

OPTIONS

To prevent abandonment of this application,[5] one of the following must be submitted within **TWO MONTHS** of the mailing date of this decision:[6]

(1) an oath/declaration signed by **all** of the named inventors;[7] **or**

(2) an oath/declaration signed by **some but not all** of the named inventors, **and**, a petition under 37 CFR 1.47(a);[8] **or**

(3) a renewed petition under 37 CFR 1.47(b) (no fee) that includes:
- -proper **proof** that the 3 named inventors **made the claimed invention** in this application **while employed by** the co-assignee, **Idaho Potato Commission ("Idaho")**,[9] and have **agreed in writing to assign such invention to Idaho**;[10] **or** that **Idaho and Florida Department of Citrus ("Florida") otherwise have sufficient proprietary interest in this application** to justify the filing of this application on behalf of and as agents for the 3 inventors;
- -proper statement(s) of facts regarding the presentation of **the entire application papers** (specification including claims; drawings) to each of the 3 inventors;[11] and the **facts** relied upon to conclude that they all refuse to sign the application;[12]

---

[5] See 37 CFR 1.53(f) (If an application which has been accorded a filing date . . . does not include an oath or declaration . . . pursuant to §1.63 . . . , applicant will be notified and given a period of time within which to . . . file an oath or declaration . . . **to avoid abandonment**).

[6] Unless proper extension(s) of time under 37 CFR 1.136(a) is (are) obtained.

[7] **Submit directly to OIPE along with a copy of this decision.**

[8] Also see MPEP sections 409.03(a), (d) (Aug. 2001).
Under this option, a petition fee of $130 is required since a petition under 37 CFR 1.47(a) is not a renewed petition of a dismissed §1.47(b) petition.

[9] Counsel declaration, page 1, paragraph 3.

[10] It is not clear how the other assignee, Florida Department of Citrus, came into play.

[11] See MPEP section 409.03(d) (Aug. 2001).

[12] *Id.* Such statement(s) must be made and signed by **those who presented the application to the inventors/concluded that the inventors refused to sign/to whom the refusals were made.**

-an oath/declaration in compliance with 37 CFR 1.63, and **signed** by an officer of each of Idaho and Florida[13] or by a person authorized by each of Idaho and Florida to sign on its behalf;[14] and
-a **showing** that filing of the application by Idaho and Florida on behalf of, and as agents for, the 3 inventors is necessary to **preserve the rights of the parties** or to **prevent irreparable damages**.[15]

The §1.47(a) petition or the renewed §1.47(b) petition may be addressed as follows:

by mail/by hand: Assistant Commissioner for Patents
USPTO, Office of Petitions
Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

by fax: (703) 308-6916
Attn: Office of Petitions

Finally, the Office acknowledges receipt with the petition of: the application basic filing fee, the extra claims fees, the surcharge for late filing of the filing fee, all in small entity amounts; the petition fee; and on July 1 2002 of an Information Disclosure Statement.

Telephone inquiries should be directed to Petitions Attorney RC Tang at (703) 308-0763.

E. Shuene Willy for
Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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13 With title identified. MPEP section 409.03(b) (Aug. 2001).

14 Must submit proof for, or statement of, such authority. See *id.* and *supra* note 4.

15 37 CFR 1.47(b). See also MPEP section 409.03(g) (Aug. 2001).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Paper No. 12

ALLEN, DYER, DOPPELT,
MILBRATH & GILCHRIST, P.A.
255 SOUTH ORANGE AVENUE, SUITE 1401
PO BOX 3791
ORLANDO, FL 32802

COPY MAILED

JUL 1 1 2003

OFFICE OF PETITIONS

In re Application of
Anderson et al.
Application No. 09/995,257
Filed: November 27, 2001
Attorney Docket No. 21652.CIP1

DECISION ACCORDING
STATUS UNDER
37 CFR 1.47(b)

This decision concerns the March 24, 2003 renewed petition under 37 CFR 1.47(b), supplemented with additional information and documents on July 2, 2003 (Certificate of Mailing date June 26, 2003).

The renewed petition is **GRANTED.**

The previous petition under 37 CFR 1.47(b), filed on June 19, 2002, was dismissed on September 16, 2002, in that, it did not include an oath or declaration executed by the proper party, e.g., assignees of the entire interest in the claimed invention, or one who otherwise had acquired sufficient proprietary interest in the application.

The instant renewed petition is accompanied by:

(1) A copy of assignment, indicating transfer, on April 8, 2003, by the State of Florida Department of Citrus, one of the two former co-assignees of the rights in this application, of its undivided interest in this application to the other co-assignee, Idaho Potato Commission, rendering the latter the assignee of the entire interest in this application;

(2) A "Statement under 37 CFR 3.73(b)" executed by an officer of the current assignee of the entire interest, Idaho Potato Commission;

(3) A declaration, executed by an officer of Idaho Potato Commission, to supplement the original declaration filed on June 19, 2002.

The "Supplemental Declaration and Petition of Patrick J. Cole under 37 CFR 1.47(b)" submitted with the instant renewed petition, in conjunction with the "Declaration for Utility or Design Patent Application (37 CFR 1.63)," is hereby accepted.

The application is now complete.

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to each of the non-signing inventors at his/her last known address indicated in the exhibits of the June 19, 2002 petition:

Kim A. Anderson
Director, Food Safety and Environmental Stewardship Program
Oregon State University
Corvallis, OR 97331-7301

Brian Smith
7555 NW McDonald Circle
Corvallis, OR 97330

Bernadene Magnuson
Assistant Professor
Dept of Nutrition and Food Science
3304 Marie Mount Hall
University of Maryland
College Park, MD 20742-7521

Notice of the filing of this application will also be published in the *Official Gazette*.

A second supplemental declaration complete with the last known address and citizenship of each of the inventors should be submitted along with the response to the first Office action on the merits.

The application file is being forwarded to Technology Center 2100 for examination in due course.

Telephone inquiries should be directed to the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Bernadene Magnuson
Assistant Professor
Dept of Nutrition and Food Science
3304 Marie Mount Hall
University of Maryland
College Park, MD 20742-7521

COPY MAILED

JUL 1 1 2003

OFFICE OF PETITIONS

In re Application of
Anderson et al.
Application No. 09/995,257
Filed: November 27, 2001
For: IDENTIFICATION SYSTEM AND METHOD FOR DETERMINING THE GEOGRAPHIC ORIGIN OF A FRESH COMMODITY

LETTER

Dear Ms. Magnuson,

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 the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions
Office of the Commissioner
for Patents

cc: Jacqueline E. Hartt, Ph.D.
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
PO Box 3791
Orlando, FL 32802

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Brian Smith
7555 NW McDonald Circle
Corvallis, OR 97330

COPY MAILED

JUL 1 1 2003

OFFICE OF PETITIONS

In re Application of
Anderson et al.
Application No. 09/995,257
Filed: November 27, 2001
For: IDENTIFICATION SYSTEM AND METHOD FOR DETERMINING THE GEOGRAPHIC ORIGIN OF A FRESH COMMODITY

LETTER

Dear Mr. Smith,

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 the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions
Office of the Commissioner
for Patents

cc: Jacqueline E. Hartt, Ph.D.
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
PO Box 3791
Orlando, FL 32802

UNITED STATES PATENT AND TRADEMARK OFFICE

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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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Kim A. Anderson
Director, Food Safety and Environmental Stewardship Program
Oregon State University
Corvallis, OR 97331-7301

COPY MAILED

JUL 1 1 2003

OFFICE OF PETITIONS

In re Application of :
Anderson et al. :
Application No. 09/995,257 :
Filed: November 27, 2001 :
For: IDENTIFICATION SYSTEM AND :
METHOD FOR DETERMINING THE :
GEOGRAPHIC ORIGIN OF A FRESH :
COMMODITY :

LETTER

Dear Ms. Anderson,

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 the undersigned at (703) 308-0763.

RC Tang
Petitions Attorney
Office of Petitions
Office of the Commissioner
for Patents

cc: Jacqueline E. Hartt, Ph.D.
Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.
255 S. Orange Avenue, Suite 1401
PO Box 3791
Orlando, FL 32802

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

February 2, 2004

Paul S. Hunter
Foley & Lardner
777 East Wisconsin Ave.
Milwaukee, WI 53202-5367

In re application of:
Buinevicious, et al DECISION ON PETITION
Serial No.: 09/995,292
Filed: November 27, 2001

For: SYSTEM AND METHOD OF CAPTURE, ANALYSIS, AND MANAGEMENT OF DISPARATE TYPES AND SOURCES OF MEDIA, BIOMETRIC, AND DATABASE INFORMATION

This is a decision on the petition received on November 17, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed December 17, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 20, 2002. A notice of abandonment was mailed on November 6, 2003.

On November 11, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgment that the attorney responded to the Notice to File Missing Parts on February 13, 2002.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts on February 13, 2002.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 2171.

Telephone inquiries concerning this matter may be directed to Doshie E. Day at (703) 308-3640.

Doshie Day

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

OIPE JC102
NOV 17 2003
PATENT & TRADEMARK OFFICE

DA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
NOV 18 2003
OFFICE OF PETITIONS

Applicant: Buinevicius et al.

Title: SYSTEM AND METHOD OF CAPTURE, ANALYSIS, AND MANAGEMENT OF DISPARATE TYPES AND SOURCES OF MEDIA, BIOMETRIC, AND DATABASE INFORMATION

Appl. No.: 09/995,292

Filing Date: November 27, 2001

Examiner: Unknown

Art Unit: 1775

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petitions, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 on November 13, 2003.

Paul S. Hunter
(Name of applicant, assignee or Registered Representative)

(Signature)

November 13, 2003
(Date of Signature)

PETITION FOR REVIVAL OF APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137

Mail Stop Petitions
Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

The above-identified application became abandoned for failure to file a timely and proper response to the Notice to File Missing Parts mailed on December 17, 2001, which set a two-month period for response.

Request is hereby respectfully made, in accordance with 37 C.F.R. § 1.137, that the above-referenced patent application (hereafter the "Application") be revived.

Applicants received a Notice of Abandonment, mailed November 6, 2003 and received by applicants on November 10, 2003, indicating that the above-referenced Application was abandoned for failure to timely and properly respond to the Notice to File Missing Parts. It is hereby requested that the Application be revived on the grounds that applicants' attorney filed a proper and timely response to the Notice to File Missing Parts on January 28, 2002. The response was received in the U.S. Patent and Trademark Office on February 13, 2002 as evidenced by the enclosed stamped post card received by applicant's attorney from the U.S. Patent and Trademark Office on March 11, 2002. Thus, the Application should be revived on the grounds that the abandonment was unavoidable 37 C.F.R. § 1.137(a), or in the alternative on the grounds that the abandonment was unintentional 37 C.F.R. § 1.137(b).

Because the abandonment was not due to an error by applicants, it is submitted that no fee should be due for revival of the Application. Nonetheless, if it is determined that a fee is required with regard to this Petition, the Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Enclosed with this petition is a photocopy of the postcard received from the U.S. Patent and Trademark Office verifying receipt of the above mentioned response. Another copy of the complete reply to the Notice to File Missing Parts is also enclosed.

Respectfully submitted,

Date Nov. 13, 2003

By

FOLEY & LARDNER
Paul S. Hunter
Telephone: (608) 258-4292
Facsimile: (608) 258-4258

Paul S. Hunter
Attorney for Applicant
Registration No. 44,787

003.457335.1

OIPE JC182
NOV 17 2003
PATENT & TRADEMARK OFFICE

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NOV 18 2003
OFFICE OF PETITIONS

Title: SYSTEM FOR AND METHOD OF CAPTURE, ANALYSIS, AND MANAGEMENT OF DISPARATE TYPES AND SOURCES OF MEDIA, BIOMETRIC, AND DATABASE INFORMATION
Inventor(s): Buinevicius et al. Dkt. No. 070156-0168
Appl. No.: 09/995,292 PSH (1/28/02)

- Formal Drawings (7 sheets);
- Transmittal of Corrected Application Papers of Patent Application
- Notice to File Corrected Papers – Part 2

Commissioner for Patents:

Please acknowledge receipt of the above-identified documents by applying the U.S. Patent and Trademark Office receipt stamp hereto and mailing this card.

Respectfully,
Foley & Lardner

OIPE JC181
FEB 13 2002
PATENT & TRADEMARK OFFICE

3/11/02

OIPE
NOV 17 2003
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U.S. POSTAGE

FOLEY & LARDNER
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Attn: Intellectual Property Team

33

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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

February 2, 2004

Paul S. Hunter
Foley & Lardner
777 East Wisconsin Ave.
Milwaukee, WI 53202-5367

In re application of:
Buinevicious, et al DECISION ON PETITION
Serial No.: 09/995,292
Filed: November 27, 2001

For: SYSTEM AND METHOD OF CAPTURE, ANALYSIS, AND MANAGEMENT OF DISPARATE TYPES AND SOURCES OF MEDIA, BIOMETRIC, AND DATABASE INFORMATION

This is a decision on the petition received on November 17, 2003, to withdraw the holding of abandonment in the above-identified application.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. 1.113 in timely manner to the Notice to File Missing Parts of Application mailed December 17, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned February 20, 2002. A notice of abandonment was mailed on November 6, 2003.

On November 11, 2003, the office received a communication from the attorney of record. Enclosed was an acknowledgment that the attorney responded to the Notice to File Missing Parts on February 13, 2002.

The evidence submitted is sufficient to establish that the petitioners responded to the Notice to File Missing Parts on February 13, 2002.

The petition is hereby GRANTED.

The application has been completed for release to Technology Center 2171.

Telephone inquiries concerning this matter may be directed to Doshie E. Day at (703) 308-3640.

Doshie Day

Doshie E. Day
Program Management Assistant
Office Initial Patent Examination

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 4

Bruce H. Cottrell
Los Alamos National Laboratory
LC/IP, MS A 187
Los Alamos, NM 87545

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JUN 2 7 2003

OFFICE OF PETITIONS

In re Application of	:	
Robert H. Kraus, et al.	:	
Application No. 09/995,302	:	DECISION GRANTING PETITION
Filed: November 27, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. S-97,799	:	

This is a decision on the petition filed June 2, 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 23, 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 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 1643 for examination in due course.

Marianne E. Morgan

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
United States Patent and Trademark Office
P. O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No. 6

UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY
P.O. BOX 1663, MS A187
LOS ALAMOS, NM 87545

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SEP 2 3 2003

OFFICE OF PETITIONS

In re Application of	:
Kraus et al.	:
Application No. 09/995,304	: DECISION GRANTING PETITION
Filed: November 27, 2001	: UNDER 37 CFR 1.137(b)
Attorney Docket No. S-94,769	:

This is a decision on the petition, filed June 2, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on October 23, 2002. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the Office of the filing of an application in a foreign country or under a multilateral international agreement that requires publication of applications 18 months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the USPTO of a foreign filing must be accompanied by:

(1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;
(2) the petition fee as set forth in 37 CFR 1.17(m); and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of January 1, 2004 was previously mailed on September 22, 2003.

This application is being forwarded to Technology Center Art Unit 1643 for examination in due course.

Any inquiries concerning this decision may be directed to Paralegal Liana Chase at (703) 306-0482.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

NOVOZYMES NORTH AMERICA, INC.
500 FIFTH AVENUE
SUITE 1600
NEW YORK NY 10110

COPY MAILED
DEC 11 2006
OFFICE OF PETITIONS

In re Application of	:	
Steven Paul Georges Cooremans	:	
et al.	:	
Application No. 09/995,321	:	DECISION ON PETITION
Filed: November 27, 2001	:	UNDER 37 C.F.R. §1.137(b)
Attorney Docket Number:	:	
10008.200-US	:	
Title: AUTOMATED MECHANICAL	:	
STRESS ASSAY FOR SCREENING	:	
CLEANING INGREDIENTS	:	

This is a decision on the petition filed August 4, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed January 24, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on April 25, 2006. A notice of abandonment was mailed August 9, 2006.

---

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. The reply required to the outstanding Office action or notice, unless previously filed;
2. The petition fee as set forth in § 1.17(m);
3. A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
4. Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

With the present petition, Petitioner has submitted the petition fee and the proper statement of unintentional delay. It is noted that a terminal disclaimer is not required.

Petitioner has also submitted a three-month extension of time. An extension of time under 37 C.F.R. §1.136 must be filed prior to the expiration of the maximum extendable period for reply[2]. Accordingly, since the $1020 extension of time submitted with the petition on August 4, 2006 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Regarding the first requirement of Rule §1.137(b), the requirement has not been satisfied because Petitioner did not submit the required reply to the Office action. The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed[3]. In order for the application to be revived, petitioner must submit a reply which satisfies 37 C.F.R. §1.137(b)(1). Although the petition indicates that a response to the non-final Office action was attached, the electronic file does not appear to contain an amendment that was filed in conjunction with the present petition.

Consequently, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.137(b)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[4], hand-delivery[5], or facsimile[6].

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 undersigned.

---

2 See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988).
3 See M.P.E.P. 711.03(c).

4 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
5 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
6 (571) 273-8300- please note this is a central facsimile number.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225[7]. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

---

7 Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

Paper No. None

NOVOZYMES NORTH AMERICA, INC.
500 FIFTH AVENUE
SUITE 1600
NEW YORK NY 10110

COPY MAILED

JAN 23 2007

OFFICE OF PETITIONS

In re Application of Steven Paul Georges Cooremans et al. Application No. 09/995,321 Filed: November 27, 2001 Attorney Docket Number: 10008.200-US Title: AUTOMATED MECHANICAL STRESS ASSAY FOR SCREENING CLEANING INGREDIENTS	DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.137(b)

This is a decision on the renewed petition filed December 14, 2006, pursuant to 37 C.F.R. §1.137(b)[1], to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed January 24, 2006, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on April 25, 2006. A notice of abandonment was mailed August 9, 2006.

---

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.

The original petition was filed on August 4, 2006, and was dismissed via the mailing of a decision on December 11, 2006.

With this renewed petition, Petitioner has indicated that continuation application 11/474,593 was filed on June 26, 2006 (Application No. 11/474,593 is not a *continuation* of the present application, but rather is a divisional - this appears to be a typographical error).

It is noted in passing that the original petition made no mention of the filing of a divisional application, and instead asserted erroneously "the proposed response…is attached."

Since this application is being revived for purposes of continuity only and since continuity has been established by this decision reviving the application, the present application is again abandoned in favor of divisional Application No. 11/474,593.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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STEPHAN A. PENDORF
PENDORF & CUTLIFF
5111 MEMORIAL HIGHWAY
TAMPA FL 33622-0455

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MAY 17 2004
OFFICE OF PETITIONS

In re Patent No. 6,730,795 :
Issued: May 4, 2004 :
Application No. 09/995,328 : ON PETITION
Filed: November 27, 2001 :
Atty. Dkt. No. MO-6855/HR-285 :

This decision is in response to the petition under 37 CFR 1.314 filed April 7, 2004.

Petitioner seeks to defer issuance of the patent in the above-identified application pursuant to 37 CFR 1.314.

The above-identified application matured into U.S. Pat. No. 6,730,795 May 4, 2004. Accordingly, the instant petition is hereby DISMISSED.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.

Alesia M. Brown
Petitions Attorney
Office of Petitions

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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DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

Wagner Murabito & Hao LLP
Two North Market Street
Thrid Floor
San Jose CA 95113

In re Application of :
van Welzen, et al. :
Application No. 09/995,377 :DECISION ON REQUEST TO
Filed: November 26, 2001 :WITHDRAW AS ATTORNEY
For: METHOD AND SYSTEM FOR DVD :
SINGLE FRAME STEPPING BACKWARDS :

This is a decision on the request to withdraw as attorney/agent of record filed on November 18, 2002

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**.

Attorney requesting withdraw is not of record due to a Revocation of Power of Attorney executed by the assignee on December 17, 2002.

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.

Kenneth A. Wieder
Special Program Examiner
Technology Center 2600
Communications

cc: SAWYER LAW GROUP LLP
P.O. Box 51418
Palo Alto, CA 94303

UNITED STATES 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. 4

Paul D. Golian
Bristol-Myers Squibb Company
Patent Department
P.O. Box 4000
Princeton, NJ 08543-4000

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AUG 1 7 2004
OFFICE OF PETITIONS

In re Application of	:
Alan P. Carpenter, Jr.	:
Application No. 09/995,388	: DECISION ON PETITION
Filed: November 27, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. PH-7201	:

This is a decision on the petition under 37 CFR 1.78(c)(3), filed January 12, 2004, which is being treated as a petition under 37 CFR 1.78(a)(6) to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior-filed provisional application.

The petition is **DISMISSED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(I) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending nonprovisional application was filed on November 27, 2001, within twelve months of the filing date of the prior-filed provisional application, Application No. 60/253,324, which was filed on November 27, 2000, and for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed application. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35 U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

> Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. *See* In re deSeversky, *supra*. *Note also* MPEP 201.06(c).

Accordingly, before the petition under 37 CFR 1.78(a)(6) can be granted, a substitute amendment[1] deleting the incorporation by reference statement, along with a renewed petition under 37 CFR 1.78(a)(6), is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Window located at:
2011 South Clark Place
Crystal Plaza Two Lobby
Room 1B03
Arlington, VA 22202

---

[1] *Note* 37 CFR 1.121

Central Fax: (703) 872-9306
ATTN: Office of Petitions

The statement contained in the instant petition is being construed as the statement required by 37 CFR 1.78(a)(3). Petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.

The Associate Power of Attorney filed January 2, 2004, has been acknowledged.

This application is being forwarded to Technology Center Art Unit 1616 for treatment of the petition under 37 CFR 1.144 and 1.181, filed January 12, 2004, and for review of the amendment filed with the instant petition.

Telephone inquiries concerning this decision may be directed to Andrea Smith at (703) 308-6711. Any inquiries after September 24, 2004, should be directed to (571) 272-3226.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances Hicks
Lead Petitions Examiner

UNITED STATES PATENT AND TRADEMARK OFFICE

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BRISTOL - MYERS SQUIBB COMPANY
PO BOX 4000
PRINCETON, NJ 08543-4000

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MAR 0 9 2005

OFFICE OF PETITIONS

In re Application of	:
Alan P. Carpenter JR.	:
Application No. 09/995,388	: DECISION ON PETITION
Filed: November 27, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. PH-7201	:

This is a decision on the renewed petition under 37 CFR 1.78(a)(6), filed September 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §119(e) for the benefit of prior-filed provisional Application No. 60/253,324, filed November 27, 2000, as set forth in the amendment filed concurrently with the instant petition.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

(1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
(2) the surcharge set forth in § 1.17(t); and
(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on November 27, 2001 and was pending at the time of filing of the instant petition. A reference to the prior-filed provisional application has been included in 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)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. *See* 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/253,324 is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicants are entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

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 Office inadvertently charged a second petition fee of $1,330.00. This fee is unnecessary and will be credited to petitioner's deposit account in due course.

Any inquiries concerning this decision may be directed to Wan Laymon at (571) 272-3220.

The application is being forwarded to Technology Center AU 1616 for appropriate

action on the amendments submitted September 17, 2004, including consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/253,324.

Frances Hicks

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt

cc: WOODCOCK WASHBURN
ONE LIBERTY PLACE
46TH FLOOR
PHILADELPHIA, PA 19103

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. 8

Philips Intellectual Property & Standards
P.O. Box 3001
Briarcliff Manor, NY 10510

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OFFICE OF PETITIONS

In re Application of
Vincent Ruol; et. al.
Application No. 09/995,458
Filed: November 27, 2001
Attorney Docket No. FR000126

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed December 8, 2003, to revive the above-identified application.

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 December 14, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight February 14, 2002.

In response to the Notice to File Missing Parts of Application, petitioner submitted with the instant petition $1,330 for the petition to revive fee, an executed Oath/Declaration, and a $130 surcharge for the late filing of the Oath/Declaration. As authorized in the instant petition, these fees have been charged to Deposit account No. 14-1270.

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 slightly varies from the language required by 37 CFR 1.137(b)(3), the statement is being construed as the statement required by 37 CFR 1.137(b)(3), and petitioner must notify the Office if this is **not** a correct interpretation of the statement.

Since the requirements for a grantable petition have been met, the petition is **GRANTED**.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this decision should be directed to Andrea Smith at (703) 308-6711.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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FROM DIRECTORS OFFICE

JUN 01 2006

TECHNOLOGY CENTER 3600

Neil Markva
8322-A Traford Lane
Springfield, Virginia 22152

In re Application of		
Enrique Monlina	:	DECISION ON PETITION
Application No. 09/995,486	:	Under 37 CFR 1.181
Filed: November 28, 2001	:	
	:	

For: **BUILDING CONSTRUCTION SYSTEM**

This is a decision on applicant's Petition Under 37 CFR 1.181 to Vacate a Final Rejection as Premature, filed April 4, 2006.

The petition is **GRANTED.**

Applicant's petition raises many issues as to why the finality of the Final Rejection mailed January 26, 2006 should not have been made final.

Applicant argues that the amendments to the claims in the June 28, 2005 response did not raise any new issues. A review of that amendment indicates that substantial changes were made to independent claim 1. Several new limitations were added and almost half the limitations of the claim from it's previous iteration were deleted. Applicant further argues that the newly cited reference to Hibbard is just as relevant to the claims as they appeared prior to the June 28, 2005 amendment and should have been applied in the previous action. That is not the criteria for improper finality. If the amendment requires further consideration or search as a result of amendment to the claims, regardless of the results of that further consideration or search, then final status is proper.

Applicant also argues that, in the Final Rejection, an objection to claim 5 was raised for the first time. This objection was not in response to any amendment made to that claim. However, new objections can properly be raised in a final rejection.

However, it is also argued that, in the amendment filed June 28, 2005, the dependency of claim 17 was changed from claim 9 to claim 48. Claim 9 had been in withdrawn status as being drawn to a non-elected invention. Claim 48 was a new claim and since the examiner examined claim 48 it can be considered as being drawn to the elected invention. Thus, claim 17 should have been examined at the time of the Final Rejection as indicated by applicant. Therefore the Final Rejection was incomplete.

In view of the fact that the final rejection was incomplete due to the failure to properly treat amended claim 17, the petition is **GRANTED**. The finality of the January 26, 2006 Office action is withdrawn.

Applicant, in this petition, brings up the fact that he requested reinstatement of claims 9-10, 14-16, 28-29 and 31-35 in the amendment filed March 21, 2006. However, this amendment was filed after the Final Rejection of January 26, 2006 and is not relevant to the finality of the January 26th Office action. It is noted that the examiner will need to address this request in her next Office action.

The application is returned to the examiner to respond to the amendment filed March 21, 2006 which is entered as a matter of right, the finality of the previous Office action having been withdrawn. In that response the examiner will indicate the finality of the previous Office action rejection is withdrawn.

For any questions concerning this decision, please contact Supervisory Patent Examiner Carl Friedman at 571-272-6842.

Wynn Coggins
Patent Technology Center 3600
Telephone No.: (571) 272-5350

CF/snm: 5/18/06

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ALEXANDRIA, VA 22313-1450
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FRANK A. MACKENZIE
FORD GLOBAL TECHNOLOGIES, LLC
ONE PARKLANE BLVD.
600 PARKLANE EAST
DEARBORN, MI 48126

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MAR 1 9 2004

OFFICE OF PETITIONS

In re Application of	:	
Rao, et al.	:	
Application No. 09/995,503	:	ON PETITION
Filed: November 29, 2001	:	
Attorney Docket No. 201-0259	:	

This is a decision on the petition under 37 CFR 1.137(b), filed December 19, 2003, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely pay the issue fee on or before December 12, 2003. Accordingly, this application became abandoned on December 13, 2003.

This application is being forwarded to Publishing Division for processing into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

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P.O. Box 1450
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Franklin ZhiGang Zhang
4717 Spencer Street
Torrance, CA 90503

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OFFICE OF PETITIONS

In re Application of :
Zhang :
Application No. 09/995,506 :
Filing Date: November 27, 2001 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(a), filed December 6, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Facts:

A non-final Office action was mailed on January 13, 2005.

The Office action stated, "A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FORM THE MAILING DATE OF THIS COMMUNICATION." The Office action stated that extensions of the three-month deadline were available under 37 CFR 1.136(a).

Petitioner never obtained an extension of time to file a reply to the Office action mailed January 13, 2005. Therefore, a reply was due by April 13, 2005, or the application would become abandoned.

A reply to the Office action was not filed until July 8, 2005. The reply was not signed by applicant. The reply included a small statement at the end of the remarks indicating the correspondence address had changed for petitioner.

The Office improperly mailed a Notice of non-complaint amendment on August 1, 2005. The Notice was improperly mailed because the application had already become abandoned as the result of applicant's failure to timely reply to the January 13, 2005 Office action.

A Notice of Abandonment was mailed on December 23, 2005.

Analysis:

Petitioner contends the Notice of Non-Compliant Amendment was never received. However, petitioner fails to address petitioner's failure to timely reply to the January 13, 2005 Office action. Petitioner has failed to prove the abandonment of the application was unavoidable.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee ($750 for a 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. A copy of a blank petition form is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

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

Attached: Form for petition under 37 CFR 1.137(b)

PTO/SB/64 (10-05)
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.

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.

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.

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

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Franklin ZhiGang Zhang
4717 Spencer Street
Torrance, CA 90503

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APR 2 5 2006

OFFICE OF PETITIONS

In re Application of :
Zhang :
Application No. 09/995,506 :
Filing Date: November 27, 2001 :

Decision on Petition

This is a decision on the petition under 37 CFR 1.137(b), filed February 28, 2006, to revive the above-identified application.

The petition is **granted**.

Facts:

A non-final Office action was mailed on January 13, 2005.

The Office action stated, "A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FORM THE MAILING DATE OF THIS COMMUNICATION." The Office action stated that extensions of the three-month deadline were available under 37 CFR 1.136(a).

Petitioner never obtained an extension of time to file a reply to the Office action mailed January 13, 2005. Therefore, a reply was due by April 13, 2005, or the application would become abandoned.

A reply to the Office action was not filed until July 8, 2005. The reply was not signed. The reply included a small statement at the end of the remarks indicating the correspondence address had changed for petitioner.

The Office improperly mailed a Notice of non-complaint amendment on August 1, 2005. The Notice was improperly mailed because the application had already become abandoned as the result of applicant's failure to timely reply to the January 13, 2005 Office action.

A Notice of Abandonment was mailed on December 23, 2005.

Analysis:

The instant petition requests revival of the application.

Petitioner has met the requirements to revive the above-identified application pursuant to 37 CFR 1.137(b). Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 2643 will be informed of the instant decision and the examiner will further examine the application 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

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)
6712574	2004-03-30	09995508	2001-11-27	HNY-P12

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	/glenn f ostrager/	Date (YYYY-MM-DD)	2008-06-19
Name	Glenn F. Ostrager	Registration Number	29963

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

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
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In re Patent No. 6712574
Issue Date: March 30,2004
Application No. 09995508
Filed: November 27,2001
Attorney Docket No. HNY-P12

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed June 19,2008 ,under 37 CFR 1.378(c) to accept the unintentionally delayed payment of the 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 19,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in an Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy

Telephone inquires related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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CAMPBELL & FLORES LLP
4370 LA JOLLA VILLAGE DRIVE
7TH FLOOR
SAN DIEGO CA 92122

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FEB 06 2004

OFFICE OF PETITIONS

Applicant: Watkins et al.
Appl. No.: 09/995,529
Filing Date: November 26, 2001
Title: HUMANIZED COLLAGEN ANTIBODIES AND RELATED METHODS
Attorney Docket No.: 66797-126
Pub. No.: US 2003/0099655 A1
Pub. Date: May 29, 2003

This is a decision on the request for corrected patent application publication under 37 CFR 1.221(b), filed on July 29, 2003 for the above-identified application.

The request is granted.

The corrected patent application publication will be published in due course.

Inquires concerning this communication should be directed to Mark Polutta at (703) 308-8122 (voice) or (703) 746-3465 (facsimile).

Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy

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C. NOEL KAMAN
BRINKS HOFER FILSON & LIONE
PO BOX 10395
CHICAGO IL 60610

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In re Application :
Yamamoto, et al. :
Application No. 09/995,544 : PATENT TERM ADJUSTMENT
Filed: November 28, 2001 :
Dkt. No.: P2548P1C18 :

This is a decision on the "PETITION FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT," filed April 18, 2005. This matter is being treated under 37 CFR 1.705(b) as an application for Patent Term Adjustment.

Applicants argue that the Office will have failed to issue a patent within three years from the date the instant application was filed in accordance with 35 U.S.C. 154(b)(1)(B) and 37 C.F.R. § 1.702(b) and request an additional adjustment of 47 days.

Applicants are advised that decision on the instant request for reconsideration of patent term adjustment ("PTA") under 37 C.F.R. § 1.705(b) is hereby **held in abeyance** subject to an issuance date being set by the Office of Patent Publications at which time the PTA will be routinely recalculated.

Applicants are further advised to submit a letter to the Office within two months of the issuance of the patent if, at the time of issuance of the patent, the appropriate adjustment under 37 C.F.R. § 1.703(b) has not been accorded.

In view thereof, at the time of Notice of Allowance the application is entitled to a patent term adjustment of 512 days.

The required application fee of $200.00 has been charged to Deposit Account No. 23-1925 as authorized in the instant application for adjustment. No additional fee will be required if applicant is solely requesting reconsideration of additional time related to failing to issue the patent within three years of the filing date.

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 for
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Pet. Dec.

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Mailed: 3/14/05

dss
Paper Number

In re application of
Charles S. Vann et al.
Serial No.09/955,554
Filed: September 18, 2001
For: MATRIX STORAGE AND DISPENSING SYSTEM

DECISION ON PETITION

This is a response to the PETITION FOR WITHDRAWAL OF ABANDONMENT filed July 23, 2003 and resubmitted on July 29, 2004 . The petition requests that the abandonment, as set forth in the Notice of Abandonment of June 10, 2003, for failure to timely file a proper reply to the Office letter of November 15, 2002, be withdrawn since the applicants did timely file a response thereto on January 10, 2003. (A copy of the response filed January 10, 2003 along with the stamped post card receipt is attached to the instant request.)

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented reveals that applicant's reply was properly filed on January 10, 2003 as evidenced by the USPTO date stamped return receipt postcard indicating receipt of the reply at the USPTO on January 10, 2003. Accordingly, any holding of abandonment for failure to timely file a proper reply to the Office letter mailed November 10, 2003 is hereby vacated, and the application is returned to pending status.

The application shall be forwarded to the examiner for entry, processing and consideration of the reply originally filed Janaury 10, 2003.

The Petition is **GRANTED**.

JMStone

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

Harness, Dickey & Pierce, P.L.C.
P.O. Box 828
Bloomfield Hills, MI 48303

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UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY
AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

MAY 20 2002

HELLER EHRMAN WHITE & MCAULIFFE LLP
1666 K STREET,NW
SUITE 300
WASHINGTON DC 20006

#9

In re Application of	:
Hans Stilz et al	:
Serial No.: 09/995,631	: PETITION DECISION
Filed: November 29, 2001	:
Attorney Docket No.: 38005-0158	:

This is a response to the petition under 37 CFR 1.59(b), filed March 1, 2002, 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 a documents submitted as a Proprietary Information Disclosure Statement be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

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.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 308-7230

Bruce M. Kisliuk
Director, Technology Center 1600

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WITHERS & KEYS, LLC
P.O. BOX 71355
MARIETTA, GA 30007-1355

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OFFICE OF PETITIONS

In re Application of
Smith, Benjamin V.
Application No. 09/995,634
Filed: November 29, 2001
Attorney Docket No. 20009.0025US01

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed November 15, 2004, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant non-provisional application for failure to timely notify the U.S. Patent and Trademark (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen-month publication country on November 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 March 24, 2005 accompanies this decision on petition.

This application is being forwarded to Technology Center AU 2642 to await a reply to the outstanding final Office action mailed October 21, 2004. Failure to timely reply will again result in the abandonment of the application.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.

Liana Chase
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

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FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
1300 I STREET, N.W.
WASHINGTON, DC 20005-3315

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OFFICE OF PETITIONS

In re Application of	:	
Tsukamoto, Akihito	:	
Application No. 09/995,637	:	ON PETITION
Filed: November 29, 2001	:	
Attorney Docket No. 04329.2702	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed June 20, 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 continuing application under CFR 1.53(b); (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the response has been accepted as having been unintentionally delayed.

The above-identified application is being revived solely for purposes of continuity. As continuity has been established by this decision reviving the above-identified application, the above-identified application is again abandoned in favor of continuing application No. 11/455,692.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3282.

Liana Chase
Petitions Examiner
Office of Petitions

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COMMISSIONER FOR PATENTS
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Paper No. None

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON DC 20006

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OFFICE OF PETITIONS

In re Application of Su-Woong Lee Application No. 09/995,665 Filed: November 29, 2001 Attorney Docket Number: 8733.538.00 Title: SEAL PATTERN FOR LIQUID CRYSTAL DISPLAY DEVICE AND FORMING METHOD THEREOF	DECISION ON PETITION UNDER 37 C.F.R. §1.181(A)

This is a decision on the petition filed July 13, 2004, pursuant to 37 C.F.R. §1.181(a)[1], to revive the above-identified application.

The Office regrets the delay in issuing this decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 15, 2003, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application

1 A grantable petition pursuant to 37 C.F.R. 1.137(b) must be accompanied by:
(1) The reply required to the outstanding Office action or notice, unless previously filed;
(2) The petition fee as set forth in § 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.

became abandoned on December 16, 2003. A notice of abandonment was mailed on June 30, 2004[2].

With the present petition, Petitioner has asserted that a response was filed on November 10, 2003. The petition indicates that copies of both the postcard receipt and the response were included with this petition, however neither has been located in the electronic file.

As such, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. 1.181(a)." This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should indicate in a prominent manner that the attorney handling this matter is Paul Shanoski, and may be submitted by mail[3], hand-delivery[4], or facsimile[5].

With the renewed petition, Petitioner should include copies of the postcard receipt and the response.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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2 As Petitioner has indicated, the notice of abandonment erroneously states that the non-final Office action was mailed on July 11, 2003. It is noted that this communication was re-mailed on September 15, 2003, and set a new period for response.
3 Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.
4 Customer Window, Randolph Building, 401 Dulaney Street, Alexandria, VA, 22314.
5 (571) 273-8300- please note this is a central facsimile number.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
WWW.USPTO.GOV

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OFFICE OF PETITIONS

MCKENNA LONG & ALDRIDGE LLP
1900 K STREET, NW
WASHINGTON DC 20006

In re Application of Su-Woong Lee Application No. 09/995,665 Filed: November 29, 2001 Attorney Docket Number: 8733.538.00 Title: SEAL PATTERN FOR LIQUID CRYSTAL DISPLAY DEVICE AND FORMING METHOD THEREOF	DECISION ON RENEWED PETITION UNDER 37 C.F.R. §1.181(A)

This is a decision on the petition filed September 12, 2006, pursuant to 37 C.F.R. §1.181(a), to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action, mailed September 15, 2003, which set a shortened statutory period for reply of three months. No response was received, and no extensions of time under the provisions of 37 C.F.R. §1.136(a) were requested. Accordingly, the above-identified application became abandoned on December 16, 2003. A notice of abandonment was mailed on June 30, 2004.

The original petition was filed on July 13, 2004, and was dismissed via the mailing of a decision on September 6, 2006. With the original petition, Petitioner asserted that a response was filed on November 10, 2003. The petition indicated that copies of both the postcard receipt and the response were included with the petition, however neither was located in the electronic file.

With this renewed petition, Petitioner has submitted a copy of the response, along with a copy of a postcard receipt which

indicates that a "reply under 37 CFR 1.111" was received in the Office on November 10, 2003.

As such, it is clear that a response was timely submitted, and subsequently misplaced in the Office.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the response to the non-final Office action can be processed.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office

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

STERNE, KESSLER, GOLDSTEIN & FOX
PLLC
1100 NEW YORK AVENUE, N.W.
SUITE 600
WASHINGTON, DC 20005-3934

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JUL 25 2002

OFFICE OF PETITIONS

In re Application of:
Myles Wakayama, Dana Vincent Laub,
Frank Carr, Afshin Mellati, David
S.P. Ho, Hsaing Bin Lee, Chun-Ying
Chen, James Y.C. Chang, Lawrence M.
Burns, Young Joon Shin, Patrick
Pai, Iconomos A. Koullias, Ron
Lipka and Luke Thomas Steigerwald
Application No. 09/995,695
Filed: November 29, 2001
Title of Invention: INTEGRATED
DIRECT CONVERSION SATELLITE TUNER

DECISION REFUSING
STATUS
UNDER 37 CFR 1.47(a)

This is in response to a Petition Under 37 CFR 1.47(a), filed April 10, 2002, to allow the other inventor(s) to proceed with the application on behalf of himself or herself and the nonsigning inventor(s).

The petition is **dismissed**.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)", and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the 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 November 29, 2001, without a fully executed oath or declaration. Accordingly, on December 10, 2001, a "Notice to File Missing Parts of Nonprovisional Application" (hereinafter "Notice"), was mailed to Petitioner. The Notice required, in relevant part, a fully executed oath or declaration. Applicant was given two-months from the date of the Notice within which to file a fully executed oath or declaration. A two month extension of time fee has been charged to deposit account 19-0036 as authorized in the Authorization to Treat Reply as Incorporating an Extension of Time Under 37 CFR 1.136(a)(3), filed with the instant application on November 29, 2001.

The petition is accompanied by the declaration of Jeffrey T. Helvey, Esq., which avers, in relevant part, that the declaration and assignment documents were sent to the nonsigning inventor at his last known address on January 11, 2002, and again on February 21, 2002, and no response has been received.

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.

As to item (1), the applicant has failed to establish that the inventor was ever presented with the application for signature. The Manual of Patent Examining Procedure ("MPEP") states that

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

Petitioner must send a copy of the entire application, including the specification, claims and drawings, along with the oath or declaration to the nonsigning inventor before refusal can be alleged.

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 concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

Paper No. 9

STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W., SUITE 600
WASHINGTON, DC 20005-3934

In re Application of
Myles Wakayama, Dana Vincent Laub, Frank Carr, Afshin Mellati, David S.P. Ho, Hsiang-Bin Lee, Chung-Ying Chen, James Y.C. Chang, Lawrence M. Burns, Young Joon Shin, Patrick Pai, Iconomos A Koullias, Ron Lipka and Luke Thomas Steigerwald
Application No. 09/995,695
Filed: November 29, 2001
Title of Invention: INTEGRATED DIRECT CONVERSION SATELLITE TUNER

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OCT 1 5 2002

OFFICE OF PETITIONS

DECISION NOTING JOINDER OF INVENTOR

This is in response to the Request for Reconsideration of Petition Under 37 CFR 1.42, or Alternatively Under 37 CFR 1.47(a), filed September 25, 2002, noting the joinder of heretofore nonsigning inventor and rendering the instant Request for Reconsideration of Petition moot.

In view of the joinder of the inventor, further consideration under 37 CFR 1.47(a) is not necessary and the Reconsideration of 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 is being returned to the Office of Initial Patent Examination for continued processing in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,697	11/29/2001	Gordon Kerr	PAT 2678- 2 US	2599

26123 7590 11/09/2007
BORDEN LADNER GERVAIS LLP
Anne Kinsman
WORLD EXCHANGE PLAZA
100 QUEEN STREET SUITE 1100
OTTAWA, ON K1P 1J9
CANADA

EXAMINER
EL CHANTI, HUSSEIN A

ART UNIT	PAPER NUMBER
2157	

NOTIFICATION DATE	DELIVERY MODE
11/09/2007	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):

ipinfo@blgcanada.com
aarmstrongbaker@blgcanada.com
akinsman@blgcanada.com

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

October 25, 2007

BORDEN LADNER GERVAIS LLP
Anne Kinsman
WORLD EXCHANGE PLAZA
100 QUEEN STREET SUITE 1100
OTTAWA ON K1P 1J9 CA CANADA

In re Application of: Kerr et al.	)	
Application No. 09/995,697	)	**DECISION ON PETITION TO**
Attorney Docket No. **PAT 2678- 2 US**	)	**CONTEST THE HOLDING OF**
Filed: November 29, 2001	)	**NONCOMPLIANCE OF APPLICANT'S**
For: **STREAM PROCESSING NODE**	)	**APPEAL BRIEF 37 CFR §1.181**

This is a decision on the petition filed August 2, 2006 under 37 C.F.R. §1.181 to contest the holding of noncompliance of Applicant's Appeal Brief.

The petition is **GRANTED**.

In the Non-compliant Appeal Brief dated July 16, 2007, the examiner stated that "A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and fine number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section. Applicant argues dependent claims 2-25, 27-29 and 34-38 in section VII but does not have a concise explanation in section V."

Applicant argued that "The Notification of Non-Compliant Appeal Brief, dated July 16, 2007, incorrectly alleges that the Appeal Brief does not comply with 37 C.F.R. 41.37 on the ground that the summary of dependent claims 2-25, 27-29 and 34-38 must refer to the specification and/or figures. Rule 41.37 (c)(1)(v) only requires that "for each dependant claim...every means plus function and step plus function...must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification...and to the drawings." However, claims 2-25, 27-29 and 34-38 are not means plus function or step plus function claims. Accordingly, applicant respectfully submits that the appeal brief complies with the requirement of the rule and that the Notification of Non-Compliant Appeal Brief is without basis."

Rule 41.37 (c)1(v) in its entirety states :

(v) *Summary of claimed subject matter*. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as

corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Based on Rule 41.37 (c)(1)(v), the examiners requirement to provide a discussion, with page and line number from the specification for each dependent claim argued separately, where the The petitioner's arguments with respect of the holding of noncompliance of Applicant's Appeal Brief are persuasive.

For the above reasons, the petition is **GRANTED**.

The application will be forwarded to the examiner for consideration on the merits.

John Follansbee
WQAS
Technology Center 2100
571-272-3964

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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Paper No. 6

FISH & NEAVE
1251 AVENUE OF THE AMERICAS
50TH FLOOR
NEW YORK, NY 10020-1105

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OCT 15 2002

OFFICE OF PETITIONS

In re Application of:
Andrew C. Gilbert
Application No. 09/995,698
Filed: November 29, 2001
Title of Invention: SYSTEMS AND METHODS FOR LINKING BIDS AND OFFERS IN A TRADING INTERFACE

DECISION REFUSING STATUS UNDER 37 CFR 1.47(b)

This is a decision on the Petition under 37 CFR 1.47(b), filed July 15, 2002, to allow the assignee to proceed with the application on behalf of and as agent for all inventors.

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 RESPOND WILL RESULT IN THE ABANDONMENT OF THIS APPLICATION.** The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47(b)."

The above-identified application was filed on November 29, 2001, without a fully executed oath or declaration. A Notice to File Missing Parts of Nonprovisional Application (hereinafter "Notice") was mailed on December 14, 2001, noting, in relevant part, the above deficiency therein.

In response, Petitioner files the instant petition wherein Petitioner avers that the inventor is deceased and that the inventor's legal representative refuses to execute the declaration for the present application. The petition avers that a letter, along with a Declaration and Power of Attorney in connection with this application were sent to the legal representative of the deceased inventor, who failed to return the Declaration and Power of Attorney, and refused to return telephone messages left on the legal representative's answering machine.

A grantable petition under 37 CFR 1.47(b) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration; (2) an acceptable oath or

declaration; (3) the petition fee; (4) a statement of the last known address of the non-signing inventor(s); (5) proof of proprietary interest; and (6) proof of irreparable damage. Rule 47(b) applicant lacks items (1), (2), (5) and (6), set forth above.

As to item (1), the applicant has failed to establish that the nonsigning inventor's legal representative was ever presented with the application for signature. The Manual of Patent Examining Procedure ("MPEP") states that

> A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

MPEP 409.03(d).

Petitioner must send a copy of the entire application, including the specification, claims and drawings, along with the oath or declaration to the nonsigning inventor before refusal can be alleged. If the application has in fact been presented to the inventor, the Petition must include this assertion in a statement of facts in support of the petition or directly in the petition. The assertion must be from a person having first hand knowledge of the presentation of the application. See MPEP 409.03(d).

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. Petitioner must include the title or position of the person signing on behalf of the company. An oath or declaration in compliance with 37 CFR 1.63 and 1.64 is REQUIRED. See MPEP 409.03(b).

As to item (5), Rule 47b applicant has failed to show or provide proof that eSpeed, Inc. (Hereinafter eSpeed), has sufficient proprietary interest in the subject matter to justify the filing of the application. Initially, it is brought to petitioner's attention that, in the absence of an assignment, the PTO will presume the named inventor to be the owner of the rights, title,

and interest to an application. *See* 37 CFR 3.73(a). This presumption may be overcome by proof that

> (A) the invention has been assigned to the applicant, or
> (B) the inventor has agreed in writing to assign the invention to the applicant, or
> (C) the applicant otherwise has sufficient proprietary interest in the subject matter to justify the filing of the application.

See Manual of Patent Examining Procedure ("MPEP") 409.03(f)

In the instant petitioner, Petitioner has failed to submit a copy of an assignment of the invention or a copy of an agreement to assign the invention. The MPEP further provides that

> [a] proprietary interest obtained other than by assignment or agreement to assign may be demonstrated by an appropriate legal memorandum to the effect that a court of competent jurisdiction (federal, state or foreign) would by weight of the authority in the jurisdiction award title of the invention to the 37 CFR 1.47(b) applicant. The facts in support of any conclusion that a court would award title to the 37 CFR 1.47(b) applicant should be made of record by way of an affidavit or declaration of the person having firsthand knowledge of the same. The legal memorandum should be prepared and signed by an attorney-at-law familiar with the law of the jurisdiction involved. A copy (in the English language) of the statute (if other than the United States statute) or a court decision (if other than a reported decision of a federal court or a decision reported in the United States Patent Quarterly) relied on to demonstrate a proprietary interest should be made of record.

MPEP 409.03(f).

Petitioner must provide a copy of an assignment of the invention, a copy of an agreement to assign the invention[1], or a legal

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[1] Acceptable proof of an agreement to assign the invention would normally include a copy of an employment agreement between the inventor, and, in this instance, eSpeed, and a clear indication that the instant invention was made by the inventor during his employment with eSpeed.

memorandum signed by an attorney familiar with the law of the relevant jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to eSpeed.

As to item (6), a statement that "the filing of the application is necessary to preserve the rights of the parties", is required.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods

Derek L. Woods
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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United States Patent and Trademark Office
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Paper No. 9

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JAN 09 2003

OFFICE OF PETITIONS

FISH & NEAVE
1251 AVENUE OF THE AMERICAS
50TH FLOOR
NEW YORK, NY 10020-1105

In re Application of
Andrew C. Gilbert
Application No. 09/995,698
Filed: November 29, 2001
For: SYSTEMS AND METHODS FOR LINKING BIDS AND OFFERS IN A TRADING INTERFACE

DECISION NOTING JOINDER OF INVENTOR AND PETITION UNDER 37 CFR 1.47(a) MOOT

This is in response to the Request for Reconsideration of Petition Under 37 CFR 1.47(b), filed December 19, 2002, noting the joinder of the legal representative of the deceased inventor and rendering the instant Request for Reconsideration of Petition moot.

In view of the joinder of the legal representative of the deceased inventor, further consideration under 37 CFR 1.47(b) is not necessary and the Reconsideration of Petition is considered to be moot. This application does not have any Rule 1.47(b) status and no such status should appear on the file wrapper. This application need not be returned to this Office for further consideration under 37 CFR 1.47(b).

This application is being returned to the Office of Initial Patent Examination for continued processing in due course.

Telephone inquiries concerning this matter should be directed to the undersigned at (703) 305-0014.

Derek L. Woods
Petitions Attorney
Office of Petitions
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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ROPES & GRAY LLP
PATENT DOCKETING 39/361
1211 AVENUE OF THE AMERICAS
NEW YORK NY 10036-8704

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MAR 3 1 2008

In re Application of

GILBERT, Andrew C. et al.
Application No. 09/995,698
Filed: November 29, 2001
Attorney Docket No. **CF/027**

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed February 19, 2008.

The request is **APPROVED**.

A grantable request to withdraw as attorney/agent of record must be signed by every attorney/agent seeking to withdraw or contain a clear indication that one attorney is signing on behalf of another/others. A request to withdraw will not be approved unless at least 30 (thirty) days would remain between the date of approval and the later of the expiration date of a time to file a response or the expiration date of the maximum time period which can be extended under 37 C.F.R. § 1.136(a).

The request was signed by Laurence Rogers on behalf of all attorneys of record who are associated with customer No. 64558. All attorneys/agents associated with the Customer Number 64558 have been withdrawn. Applicant is reminded that there is no attorney of record at this time.

The request to change the correspondence of record is not acceptable as the requested correspondence address is not that of: (1) the first named signing inventor; or (2) an intervening assignee of the entire interest under 37 C.F.R 3.71. All future communications from the Office will be directed to the second named signing inventor at the first copied address below until otherwise properly notified by the applicant.

Telephone inquiries concerning this decision should be directed to Tredelle Jackson at 571-272-2783.

Tredelle D. Jackson
Petitions Examiner
Office of Petitions

cc: **MARY ANN GILBERT**
5 SCARLET OAK ROAD
CALIFON, NJ 07830

cc: **DEAN P. ALDERUCCI**
CANTOR FITZGERALD, L.P.
110 EAST 59TH STREET (6TH FLOOR)
NEW YORK, NY 10022

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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CROWELL & MORING LLP
P O BOX 14300
WASHINGTON, DC 20044-4300

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JUL 19 2005

OFFICE OF PETITIONS

In re Application of	:
Takehiro Onomatsu	:
Application No. 09/995,742	: DECISION GRANTING PETITION
Filed: November 29, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 3064YA/50736	:

This is a decision on the petition, filed July 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 June 21, 2005 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3218.

This matter is being referred to Technology Center AU 2614 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
for Patent Examination Policy

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* ***must*** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

HEWLETT PACKARD COMPANY
PO BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

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NOV 1 8 2004

OFFICE OF PETITIONS

In re Application of :
Evelyn Duesterwald et al :
Application No. 09/995,775 :
Filed: November 29, 2001 :
Attorney Docket No. 10011514-1 :

ON PETITION

This is a decision on the petition, filed November 12, 2004, under 37 CFR 1.313(c)(2) to withdraw the above-identified application from issue after payment of the issue fee.

The petition is **GRANTED.**

The above-identified application is withdrawn from issue for consideration of a submission under 37 CFR 1.114 (request for continued examination). See 37 CFR 1.313(c)(2).

Petitioner is advised that the issue fee paid on September 24, 2004 in the above-identified application cannot be refunded. If, however, the above-identified application is again allowed, petitioner may request that it be applied towards the issue fee required by the new Notice of Allowance.[1]

Telephone inquiries should be directed to the undersigned at (571) 272-3208.

The examiner of Technology Center AU 2111 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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Paper No. 20

Nixon & Vanderhye
1100 N. Glebe Road, 8th Fl.
Arlington, VA 22201-4714

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OCT 29 2003

OFFICE OF PETITIONS

In re Application of :
Geert Maerterns et al. :
Application No. 09/995,791 :
Filed: November 29, 2001 :
Attorney Docket No. 2551-68 :

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b) filed August 29, 2003, to revive the above-identified application.

The petition is granted.

The above-identified application became abandoned for failure to reply in a timely manner in reply to the non-final Office action mailed January 23, 2003, which set a statutory period for reply of One (1) month from the mail date of the Notice. A Two (2) month extension of time under the provisions of 37 CFR 1.136 was obtained on March 26, 2003. Accordingly, the application became abandoned on March 27, 2003.

The application file is being forwarded to Technology Center AU 1648 for further processing.

Telephone inquiries regarding this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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MAGINOT, MOORE & BECK
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INDIANAPOLIS IN 46204-5115

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FEB 10 2005

OFFICE OF PETITIONS

In re Application of	:	
Byron J. Slater et al	:	
Application No. 09/995,844	:	DECISION GRANTING PETITION
Filed: November 28, 2001	:	UNDER 37 CFR 1.137(b)
Attorney Docket No. 2001P17789US01	:	

This is a decision on the petition under 37 CFR 1.137(b), filed September 27, 2004, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an executed declaration and the required fees; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice To File Missing Parts Of Nonprovisional Application of December 17, 2001 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 Initial Patent Examination.

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 7

LAHIVE & COCKFIELD
28 STATE STREET
BOSTON, MA 02109

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JUN 03 2002
OFFICE OF PETITIONS

COPY MAILED
CANCELLED
MAY 03 2002
OFFICE OF PETITIONS

In re Application of
Carlo Dante Rizzuto et al
Application No. 09/995,847
Filed: November 28, 2001
For: MODULAR MOLECULAR CLASPS AND USES THEREOF

DECISION GRANTING STATUS UNDER 37 CFR 1.47(A)

This is in response to the "Petition Under 37 CFR 1.47(a)," filed March 18, 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 Petitions Examiner Wan Laymon at (703) 306-5685.

This application is being forwarded to Initial Patent Examination Division for further 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

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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LAHIVE & COCKFIELD
28 STATE STREET
BOSTON MA 02109

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AUG 17 2005

OFFICE OF PETITIONS

In re Application of	:	
Carlo Dante Rizzuto et al	:	
Application No. 09/995,847	:	ON PETITION
Filed: November 28, 2001	:	
Attorney Docket No. ENZ-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 22, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The two-month period for filing the Appeal Brief under 37 CFR 41.37(a)(1), accompanied by the fee set forth in 37 CFR 41.20(b)(2), runs from the date of this decision.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This matter is being referred to Technology Center AU 1636

Karen Creasy

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc:
ROPES & GRAY
ONE INTERNATIONAL PLACE
BOSTON, MASSACHUSETTS 02110-2624

UNITED STATES PATENT AND TRADEMARK OFFICE

SEP 9 2005

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Alexandria, VA 22313-1450
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NIXON & VANDERHYE P.C.
1100 North Glebe Road, 8th Floor
Arlington, Virginia 22201-4714

In re Application of
Maertens et al
Serial No. : 09/995,860
Filed : November 29, 2001
Attorney Ref No. : 2551-69

Decision on Petition

This letter is in response to the Petition under 37 C.F.R. 1.181, filed on July 14, 2004, to request the review and withdraw of the restriction requirement. The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the application was filed on November 29, 2001 with 14 claims.

On August 8, 2003, applicants cancelled claims 1-14 and added new claims 15-42. A restriction requirement was made on September 24, 2003 restricting the claims into nine groups, drawn to HCV vaccines and methods of their use. On October 24, 2004, applicants elected with traverse group I, claims 15, 36 and 40 drawn to a therapeutic HCV vaccine and a method of its use.

On January 15, 2004, the examiner rejoined the subject matter of Group II, drawn to a therapeutic HCV vaccine and a method of its use, with the subject matter of elected Group I and a first action on the merits was sent to applicants in which claims 15, 16, 18, 20-26, and 36-40 were rejected and claims 17, 19, 27-35 and 41-43 were withdrawn from consideration.

On July 14, 2004, applicants amended the claims and traversed the rejections as they applied to the newly amended claims. Applicants additionally filed the instant petition to request the review and withdraw of the restriction requirement along with this response.

On October 19, 2004, a final rejection was sent to applicants in which claims 15-17, 20-26, 36-39 and 43 were rejected and claims 27-35 and 41 and 42 withdrawn from consideration.

On February 22, 2005, applicants filed a request for continued examination, amendments of the claims and arguments supporting applicant's position.

On June 2, 2005, a non-final rejection was sent to applicants acknowledging applicants instant petition filed under 1.181, and Groups I-III, claims 16-17, 20-26 and 36-43 were rejoined and examined. Claims 16, 17, 20-26 and 36-43 were rejected in this office action and claims 27-35 remained withdrawn.

On August 12, 2005, applicants responded to the previous office action by amending the claims and traversing the rejections as they applied to the amended claims.

DISCUSSION

The application, file history and petition under 37 C.F.R. 1.181 to request review of the restriction requirement has been considered, in full to the extent that it applies to the amended claims.

It is noted that applicant's arguments regarding the rejoinder of Groups I-III are now considered moot in light of the examiners rejoining of groups I-III on 6/2/2005.

It is additionally noted that current claims 27-35, now withdrawn, are each drawn to a method in which the only active step is "administering a therapeutic HCV vaccine composition according to claims 16 to 17 to said mammal". This is the identical active step of claim 36, which is currently under examination. Since the only active step in each of claims 25-36 is identical, and claim 36 is currently being examined, the restriction requirement between claims 27-35 (original group IV) and claim 36 is hereby withdrawn because the groups are not distinct.

DECISION

For these reasons, the petition under 37 C.F.R. 1.181, to request review of the restriction requirement is **GRANTED**. As discussed above, original Groups I through III have already been rejoined and are under examination. Group IV, claims 27-35, are rejoined to the currently examined claims as a result of this petition decision.

The application will be forwarded to the examiner to take appropriate action as a result of this petition decision and to consider the amendments and arguments filed by applicants on August 22, 2005.

Should there be any questions regarding this decision, please contact Special Program Examiner Julie Burke, by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-1600 or by Official Fax at 5717273-8300.

George Elliott
Director, Technology Center 1600.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
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Paper No. 5

Edwards and Angell, LLP
Dike, Bronstein, Roberts & Cushman, IP Group
P. O. Box 9169
Boston, MA 02209

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JUN 2 4 2002

OFFICE OF PETITIONS

In re Application of	:	
Thomas A. Koes	:	
Application No. 09/995,880	:	DECISION DISMISSING
Filed: November 29, 2001	:	PETITION
Attorney Docket No. 50884	:	

This is a decision on the petition filed April 29, 2002, requesting that the above-identified application be accorded a filing date of November 28, 2001, rather than the presently accorded date of November 29, 2001.

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)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be forwarded to Technology Center 1700 for examination in due course with the presently accorded filing date of November 29, 2001.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on November 28, 2001, pursuant to the requirements of 37 CFR 1.10.

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).

The evidence presented by petitioner does not corroborate petitioner's allegations. The "date-in" on the USPS "Express Mail" label is illegible. As such, the date of deposit cannot be determined by the "date-in" on the "Express Mail" label. Petitioner has provided a copy of a document obtained by the USPS showing when the Office received the package, but it does not show the date the package was deposited at the USPS. Petitioner should obtain information from the USPS showing the date the package was deposited at the USPS.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner of Patents
Box DAC
Washington, DC 20232

or

U. S. Patent and Trademark Office
P. O. Box 2327, Mail Stop DAC
Arlington, VA 22202

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

Brian Hearn

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
For Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
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Paper No. 7

Edwards and Angell, LLP
Dike, Bronstein, Roberts & Cushman, IP Group
P. O. Box 9169
Boston, MA 02209

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OFFICE OF PETITIONS

In re Application of	:	
Thomas A. Koes	:	
Application No. 09/995,880	:	DECISION GRANTING
Filed: November 29, 2001	:	PETITION
Attorney Docket No. 50884	:	

This is a decision on the petition filed July 23, 2002, requesting that the above-identified application be accorded a filing date of November 28, 2001, rather than the presently accorded date of November 29, 2001. The petition is properly treated as a petition under 37 CFR 1.10(c).

Petitioner alleges that the application was deposited in Express Mail Service on November 28, 2001. In support, the petition is accompanied by a copy of Express Mail receipt # ET75554119US (the same Express Mail number found on the original application papers located in the official file) showing a "date in" of November 28, 2001. The original Express Mail envelope that contained the application papers is now present in the application file. It is noted that the label matches that of petitioner's receipt but does not contain any information regarding the "date-in." However, the envelope is clearly post-marked by the USPS on November 28, 2001.

In view of the above, the petition is **GRANTED**.

This application file is being forwarded to the Office of Initial Patent Examination Division for further **processing with a filing date of November 28, 2001.** Thereafter, the application file will be forwarded to Technology Center 1700 for examination in due course.

Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.

Sherry 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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MAR 2 4 2004

OFFICE OF PETITIONS

PATRICIA E. MCQUEENEY ESQ.
BECKER & POLIAKOFF, P. A.
3111 STIRLING ROAD
FORT LAUDERDALE, FL 33312

In re Application of
Heung Ki Cho, et al.
Application No. 09/995,885
Filed: November 28, 2001
Attorney Docket No. MOC-100XC1

DECISION GRANTING PETITION
UNDER 37 CFR 1.137(b)

The above-identified application has been referred to this Office for consideration of (1) the petition filed January 15, 2004 to accept the late payment of the issue fee and (2) the a petition under 37 CFR 1.137(b), filed January 27, 2004, to revive the instant nonprovisional application for a 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.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on November 28, 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. Accordingly, the application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) on January 13, 2003, which is prior to the mailing of the Notice of Allowance and Issue Fee Due on March 8, 2003. Consequntly, the communications filed January 15, 2004 and January 27, 2004, are being construed as a petition under 37 CFR 1.137(b) to revive the application for a 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.

Receipt is acknowledged of the $665 issue fee payment on January 15, 2004. However, petitioner is reminded that the Notice of Allowability and Notice of Allowance mailed March 8, 2003, did not require the submission of a publication fee. In view of the rescinding of the nonpublication request, a publication fee of $300 is now due. Therefore, as authorized, and in order to expedite issuance of this application, the $300 publication fee will be charged to petitioner's Deposit Account No. 50-1731. If publication of the application does not occur, applicant may file a request for a refund after the patent issues. See 37 CFR 1.211(e).

Any inquiries concerning this decision may be directed to Sherry D. Brinkley at (703) 305-9220.

This application is being forwarded to Publication Division.

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

Mailed: MAY 12 2004

spg
Paper Number _____

In re application of	:	
Heung Cho et al.	:	DECISION ON
Serial No. 09/995,885	:	PETITION
Filed: November 28, 2001	:	
For: METHOD AND APPARATUS FOR WELDING	:	

This is a response to the PETITION TO WITHDRAW HOLDING OF ABANDONMENT (37 C.F.R. § 1.181 or § 1.137 AND M.P.E.P. § 711.03(c)) filed on January 15, 2004. The petition requests that the abandonment, as set forth in the Notice of Abandonment of September 15, 2003, for failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance be withdrawn. The requester asserts that the Notice of Allowance was not received at the applicant's correspondence address.

DECISION

The instant request has been accepted as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 (no fee) - no abandonment-in-fact. A review of the evidence presented with the petition, as well as the application record, indicates that the petitioner's request has been rendered moot in light of the withdrawal of the Notice of Abandonment. A Decision Granting Petition Under 37 CFR 1.137(b) was mailed on March 24, 2004 by the Office of Petitions. The application has been forwarded to the Publication Division for processing

The Petition is **DISMISSED**.

Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

PATRICIA E. MCQUEENEY ESQ.
BECKER & POLIAKOFF, P. A.
3111 STIRLING ROAD
FORT LAUDERDALE FL 33312

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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MICHAEL BEST & FRIEDRICH LLP
ONE SOUTH PINCKNEY STREET
P O BOX 1806
MADISON, WI 53701

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APR 0 5 2005

OFFICE OF PETITIONS

In re Application of	:
Richard B. Mazess	:
Application No. 09/995,911	: DECISION GRANTING PETITION
Filed: November 28, 2001	: UNDER 37 CFR 1.313(c)(2)
Attorney Docket No. 017620-9335	:

This is a decision on the petition, filed April 1, 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 18, 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 1617 for processing of the request for continued examination under 37 CFR 1.114 and for consideration of the concurrently filed Information Disclosure Statement.

Frances Hicks
Frances Hicks
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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[1] *The request to apply the issue fee to the new Notice may be satisfied by completing and returning the new Issue Fee Transmittal Form PTOL-85(b), which includes the following language thereon: "Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or re-apply any previously paid issue fee to the application identified above." Petitioner is advised that, whether a fee is indicated as being due or not, the Issue Fee Transmittal Form* **must** *be completed and timely submitted to avoid abandonment. Note the language in bold text on the first page of the Notice of Allowance and Fee(s) Due (PTOL-85).*

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

In re Patent No. 6921848
Issue Date: July 26,2005
Application No. 09995938
Filed: November 27,2001
Attorney Docket No. SALKINS.046A

:

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)

:

This is a decision on the electronic petition, filed September 29,2009 ,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 September 29,2009 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

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)
6921848	2005-07-26	09995938	2001-11-27	SALKINS.046A

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☒ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☐ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
○ 3 ½ year	(1551)	◉ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Kendal M. Sheets/	Date (YYYY-MM-DD)	2009-09-28
Name	Kendal M. Sheets	Registration Number	47077

This collection of information is required by 37 CFR 1.378(c). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/ or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **This form can only be used when in conjunction with EFS-Web. If this form is mailed to the USPTO, it may cause delays in reinstating the patent.**

Privacy Act Statement

The Privacy Act of 1974 (P.L. 93-579) requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether the Freedom of Information Act requires disclosure of these record s.

2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.

3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.

4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.

6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).

7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.

8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspections or an issued patent.

9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:20070619

DATE : June 19, 2007

TO SPE OF : ART UNIT 1775

SUBJECT : Request for Certificate of Correction on Patent No.: 6,692,816

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: Jennifer McNeil **Art Unit** 1775

UNITED STATES PATENT and TRADEMARK OFFICE
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
WWW.USPTO.GOV

AUG 30 2004

td

Mailed:

In re application of	:	
Michael T. Morman et al.	:	DECISION ON
Serial No. 09/995,962	:	PETITION
Filed: November 28, 2001	:	

For: PROCESS FOR MAKING NECKED NONWOVEN WEBS AND LAMINATES HAVING CROSS-DIRECTIONAL UNIFORMITY

This is a decision on the PETITION UNDER 37 CFR 1.181 TO REQUIRE REJOINDER OF CLAIMS 33, 40, 45, 55, 62, 67, 74, 81 AND 86.

The instant petition was filed on June 28, 2004. In the petition, it is urged that the aforementioned claims should be rejoined and included in the allowed claims.

DECISION

It is noted that the examiner prepared a supplemental notice of allowability which was mailed on August 9, 2004. In this action, the examiner rejoined all of the withdrawn claims and indicated that said claims are allowable thereby making the instant petition moot. Accordingly the petition is **DISMISSED.**

JMStone

Jacqueline M. Stone, Director
Technology Center 1700
Chemical and Materials Engineering

PAULEY PETERSEN & ERICKSON
2800 WEST HIGGINS ROAD
HOFFMAN ESTATES IL 60195

UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE

PERKINS COIE LLP
PATENT-SEA
P.O. BOX 1247
SEATTLE, WA 98111-1247

COPY MAILED

JUN 1 6 2005

Director's Office
Office of Patent Publication

In re Application of
John Chenault :
Application No. 09/995,966 : **DECISION ON PETITION**
Filed: November 28, 2001 :
Attorney Docket No. 249768059US :

This is a decision on the Petition Under 37 C.F.R. § 1.181, received in the United States Patent and Trademark Office (USPTO) on June 2, 2005.

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 pay the issue fee within the statutory period of three months, as required in the Notice of Allowance and Fee(s) Due mailed January 13, 2005. Accordingly, the Notice of Abandonment was mailed May 25, 2005.

Petitioner states that on March 4, 2005 a Supplemental Notice of Allowance was issued to correct an error occurring in an Examiner's Amendment contained in the January 13, 2005 Notice of Allowance. Also, that the Supplemental Notice establishes a new deadline of June 4, 2005 for pay the issue fee. Petitioner indicates that the issue fee is being paying today (with the Petition). A copy of the Form PTOL-85 is enclosed.

Investigation of the patent application doesn't reveal any presence of a Supplemental Notice Of Allowance. It does reveal that a Supplemental Notice of **Allowability** was mailed on March 4, 2005, which does not extend or restart the time period to pay the fee(s).

The petitioner's copy of Part B – Fee(s) Transmittal submitted with the petition, reveals that the applicant has changed the Date Due on the form, to June 4, 2005.

Since, the period to pay the issue fee was not restarted, the holding of abandonment for the above-identified patent application was proper.

The holding of abandonment will not be withdrawn as this time.

Although this petition for withdrawal of the holding of abandonment is being dismissed, Petitioner may seek relief by filing a Petition for Revival of Abandoned Application under 37 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.
  (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 the petition for revival under 37 CFR 1.137 should be directed to the Office Of Petition at 703-305-9282 or addressed as follows:

By mail: Commissioner for Patents
P O Box 1450
Mail Stop Petitions
Alexandria, VA 22313-1450

Telephone inquires concerning this decision may be directed to the undersigned at 703-308-9250.

Thomas E. Hawkins

Thomas E. Hawkins
Paralegal Specialist
Office of the Director
Office of Patent Publications

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

PERKINS COIE
PATENT-SEA
P.O. BOX 1247
SEATTLE, WA 98111-1247

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JUL 2 6 2005

OFFICE OF PETITIONS

In re Application of	:	
John Chenault	:	
Application No. 09/995,966	:	ON PETITION
Filed: November 28, 2001	:	
Attorney Docket No. 249768059US	:	

This is a decision on the petition under 37 CFR 1.137(b), filed June 30, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to submit the issue fee/publication fee in a timely manner in reply to the Notice of Allowance mailed January 13, 2005, which set a statutory period for reply of three (3) months. Accordingly, the above-identified application became abandoned on March 14, 2005.

Telephone inquiries concerning this decision should be directed to Wan Laymon at (571) 272-3220.

This application file is being forwarded to Publishing Division.

Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays valid OMB control number.

PETITION TO ACCEPT UNINTENTIONALLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(c))

Patent Number	Issue Date (YYYY-MM-DD)	Application Number	Filing Date (YYYY-MM-DD)	Docket Number (if applicable)
6563445	2003-05-13	09995967	2001-11-28	VLA05967

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	/Charles C Cary/	Date (YYYY-MM-DD)	2008-09-25
Name	Charles C Cary	Registration Number	36764

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. 6563445
Issue Date: May 13,2003
Application No. 09995967
Filed: November 28,2001
Attorney Docket No. A5NJ1903US

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed September 25,2008 ,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 September 25,2008 . This decision also constitutes notice that the fee has been accepted. An electronic copy of the petition and this decision has been created as an entry in the Image File Wrapper. Nevertheless, petitioner should print and retain an independent copy.

Telephone inquiries related to this electronic decision should be directed to the Electronic Business Center at 1-866-217-9197.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

JJGJR.: 06-06

Paper No: __

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JUN 19 2006

OFFICE OF PETITIONS

COLLARD & ROE, P.C.
1077 NORTHERN BOULEVARD
ROSLYN NY 11576

In re Application of	:	
Michaelis, et al.	:	DECISION
Application No.: 09/995,982	:	
Filing Date: 21 November, 2001	:	
Attorney Docket No. 010488-US	:	

This is a decision on the petition filed on 26 May, 2006, to revive the instant application under 37 C.F.R. §1.137(b) as having as abandoned due to unintentional delay.

For the reasons set forth below the petition as considered under 37 C.F.R. §1.137(b) is **GRANTED**.

BACKGROUND

The record reflects that:

- Petitioner failed to reply timely and properly to the non-final Office action mailed on 23 February, 2005, with reply due absent extension of time on or before 23 May, 2005;
- the application went abandoned by operation of law after midnight 23 May, 2005;
- the Office mailed the Notice of Abandonment on 21 September, 2005;
- on 26 May, 2006, Petitioner filed with the instant petition (with fee) a reply in the form of an amendment, and made the statement of unintentional delay (although Petitioner was not Counsel of record at the time of the abandonment, the statement of the averred

assignee is included therewith)–thus, it appears that Petitioner has satisfied the regulatory requirement under 37 C.F.R. §1.137(b);

- 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]

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[1] See supplement of 17 June, 1999. The Patent and Trademark Office is relying on petitioner's duty of candor and good faith and accepting a statement made by Petitioner. See Changes to Patent Practice and Procedure, 62 Fed. Reg. at 53160 and 53178, 1203 Off. Gaz. Pat. Office at 88 and 103 (responses to comments 64 and 109)(applicant obligated under 37 C.F.R. §10.18 to inquire into the underlying facts and circumstances when providing statements to the Patent and Trademark Office).

Specifically, the regulations at 37 C.F.R. §10.18 provide:

§ 10.18 Signature and certificate for correspondence filed in the Patent and Trademark Office.
(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature by such practitioner complying with the provisions of §1.4(d), §1.4(e), or § 2.193(c)(1) of this chapter.
(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that—
(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and
(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that —
(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;
(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.
(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of —
(1) Holding certain facts to have been established;
(2) Returning papers;
(3) Precluding a party from filing a paper, or presenting or contesting an issue;
(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, and so cannot satisfy the test for diligence and due care.

(By contrast, unintentional delays are those that do not satisfy the very strict statutory and regulatory requirements of unavoidable delay, and also, by definition, are not intentional.[7]))

Allegations as to Unintentional Delay

The requirements for a grantable petition under 37 C.F.R. §1.137(b) are the petition and fee, a

---

[2] 35 U.S.C. §133 provides:
35 U.S.C. §133 Time for prosecuting application.
Upon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Commissioner in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

[3] Therefore, by example, an unavoidable delay in the payment of the Filing Fee might occur if a reply is shipped by the US Postal Service, but due to catastrophic accident, the delivery is not made.

[4] See: *Changes to Patent Practice and Procedure*; *Final Rule Notice*, 62 *Fed. Reg.* at 53158-59 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* at 86-87 (October 21, 1997).

[5] See: In re Application of G, 11 USPQ2d 1378, 1380 (Comm'r Pats. 1989).

[6] See: Diligence in Filing Petitions to Revive and Petitions to Withdraw the Holding of Abandonment, 1124 Off. Gaz. Pat. Office 33 (March 19, 1991). It was and is Petitioner's burden to exercise diligence in seeking either to have the holding of abandonment withdrawn or the application revived. See 1124 Off. Gaz. Pat. Office supra.

[7] Therefore, by example, an unintentional delay in the reply might occur if the reply and transmittal form are to be prepared for shipment by the US Postal Service, but other pressing matters distract one's attention and the mail is not timely deposited for shipment.

statement/showing of unintentional delay, a proper reply, and–where appropriate--a terminal disclaimer and fee if the application was filed before 8 June, 1995. Petitioner may review the commentary set forth at MPEP §711.03(c) and the language at 37 C.F.R. §1.137(b) for guidance.

The requirements for relief under the provisions of 37 C.F.R. §1.137(b) are: petition, fee, reply, showing of unintentional delay, and–where appropriate–a terminal disclaimer and fee.

It appears that Petitioner has satisfied the requirements of the regulation.

CONCLUSION

Because Petitioner appears to have satisfied the regulatory requirements, the petition under 37 C.F.R. §1.137(b) is **granted**.

The application is released to the Examiner in Technology Center 2600 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

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

CATHERINE U. BROWN
DOW CORNING CORPORATION
INTELLECTUAL PROPERTY DEPT. - CO1232
P.O. BOX 994
MIDLAND, MI 48686-0994

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APR 04 2003

OFFICE OF PETITIONS

In re Application of	:	
Hwang, et al.	:	
Application No. 09/995,985	:	ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. DC4974	:	

This is a decision on the petition under 37 CFR 1.137(a), filed September 24, 2002, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)."

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 December 28, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 1, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by:

(1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may

be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

This petition lacks 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 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).

Petitioner asserts that the delay was caused by docketing errors by two employees ("senior level office professional" and "contract worker").

MPEP 711.03(c) states: "A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

> (A) the error was the cause of the delay at issue;
>
> (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
>
> (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care."

Petitioner has not shown that there was in place a business routine for performing the clerical function *that could reasonably be relied upon to avoid errors* in its performance. Additionally, petitioner has not provided the necessary information to show that the "senior level office professional" and "contract worker" were sufficiently trained with regard to the function and routine for its performance *that reliance upon such employee represented the exercise of due care*.

As currently submitted, the instant petition appears to show that at the time in question, there was *not* a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance and that the "senior level office professional" and "contract worker" were *not* sufficiently trained with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

As such, the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable within the meaning of 35 U.S.C. § 133 and 37 CFR 1.137(a).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries should be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Senior Petitions 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
www.uspto.gov

Paper No. 8

CATHERINE U. BROWN
DOW CORNING CORPORATION
INTELLECTUAL PROPERTY DEPT. - CO1232
P.O. BOX 994
MIDLAND, MI 48686-0994

COPY MAILED

APR 1 8 2003

OFFICE OF PETITIONS

In re Application of	:	
Hwang, et al.	:	
Application No. 09/995,985	:	ON PETITION
Filed: November 19, 2001	:	
Attorney Docket No. DC4974	:	

This is a decision on the petition under 37 CFR 1.137(b), filed April 15, 2003, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 28, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on March 1, 2002.

The file is being forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 306-9200.

Edward J. Tannouse
Petitions Attorney
Office of Petitions
United States Patent and Trademark Office

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, DC 20231
www.uspto.gov

MAIL Paper No. 4

JUN 1 2 2003

DIRECTOR OFFICE
TECHNOLOGY CENTER 2600

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP
12400 WILSHIRE BOULEVARD, SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

In re Application of	:	
Eric Cheng	:	
Application No. 09/996,016	:	DECISION ON REQUEST TO
Filed: November 28, 2001	:	WITHDRAW AS ATTORNEY
For: SYSTEM FOR HEADPHONE-LIKE REAR CHANNEL SPEAKER AND THE METHOD OF THE SAME	:	

This is a decision on the request to withdraw as attorney/agent of record filed on December 11, 2002.

A grantable request to withdraw as attorney/agent of record must do the following:
(1) indicate the present mailing address of the attorney(s)/agent(s) who seek(s) to withdraw, and
(2) be signed by each attorney/agent seeking to withdraw or clearly be signed on their behalf, and
(3) be *approved* at least thirty (30) days prior to the maximum extendable period for response to any outstanding Office Action, and
(4) indicate the address to which future correspondence should be mailed.

Petitioner has met all of the above. Accordingly, the request is **GRANTED**.

All of the attorneys of record are granted the request for withdraw of attorney/agent.

All future communications from the Office will be directed to the address listed below until otherwise notified by applicant. Applicant is reminded of the obligation to promptly notify the Patent and Trademark Office of any change in correspondence address to ensure receipt of all communications from the Office.

Richard J. Enright
For Kenneth Wieder
Special Program Examiner
Technology Center 2600
Communications
(703) 305-4710

cc: Chun M. Ng, Esq.
PERKINS COIE LLP
1201 Third Avenue
Suite 4800
SEATTLE WA 98101-3099

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:071007

DATE : July 10, 2007

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 6,706,744

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 changes to Column 74, lines 41 & 45; Column 78, line 30; and the deletion of Column 82, line 28 through Column 90, line 30 would change the meaning of the claims.

Joseph K McKane
JOSEPH K. McKANE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

SPE: Joseph McKane **Art Unit** 1626

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.:091707

DATE : September 17, 2007

TO SPE OF : ART UNIT 1626

SUBJECT : Request for Certificate of Correction on Patent No.: 6,706,744

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:

Joseph K. McKane 9/19/07

SPE: Joseph McKane **Art Unit** 1626

UNITED STATES 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. 6668695
Issue Date: December 30,2003
Application No. 09996055
Filed: November 28,2001
Attorney Docket No. 3339-PA3CD

:
:DECISION GRANTING PETITION
:UNDER 37 CFR 1.378(c)
:

This is a decision on the electronic petition, filed February 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 February 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.

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)
6668695	2003-12-30	09996055	2001-11-28	3339-PA3CD

CAUTION: Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number and (2) the application number of the actual U.S. application leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

SMALL ENTITY
☐ Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27.

LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS
☒ Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

NOT Small Entity		Small Entity	
Fee	Code	Fee	Code
◉ 3 ½ year	(1551)	○ 3 ½ year	(2551)
○ 7 ½ year	(1552)	○ 7 ½ year	(2552)
○ 11 ½ year	(1553)	○ 11 ½ year	(2553)

SURCHARGE
The surcharge required by 37 CFR 1.20(i)(2) (Fee Code 1558) must be paid as a condition of accepting unintentionally delayed payment of the maintenance fee.

MAINTENANCE FEE (37 CFR 1.20(e)-(g))
The appropriate maintenance fee must be submitted with this petition.

STATEMENT
THE UNDERSIGNED CERTIFIES THAT THE DELAY IN PAYMENT OF THE MAINTENANCE FEE TO THIS PATENT WAS UNINTENTIONAL

PETITIONER(S) REQUEST THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED

THIS PORTION MUST BE COMPLETED BY THE SIGNATORY OR SIGNATORIES

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

I certify, in accordance with 37 CFR 1.4(d)(4) that I am

◉ An attorney or agent registered to practice before the Patent and Trademark Office

○ A sole patentee

○ A joint patentee; I certify that I am authorized to sign this submission on behalf of all the other patentees.

○ A joint patentee; all of whom are signing this e-petition

○ The assignee of record of the entire interest

Patent Practitioner			
A signature of the applicant or representative is required in accordance with 37 CFR 1.33 and 10.18. Please see 37 CFR 1.4(d) for the form of the signature			
Signature	/Robert A. Parsons/	Date (YYYY-MM-DD)	2008-02-12
Name	Robert A. Parsons	Registration Number	32713

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

JHK Law
P.O. Box 1078
La Canada, CA 91012-1078

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FEB 1 1 2008

OFFICE OF PETITIONS

In re Application of	:	
Cynthia Bamdad et al.	:	
Application No. 09/996,069	:	DECISION ON PETITION
Filed: November 27, 2001	:	
Attorney Docket No. M1015.70071US	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed December 27, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed November 1, 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 February 2, 2007. A Notice of Abandonment was mailed on July 2, 2007.

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 after non-final, (2) the petition fee of $770.00, and (3) a proper statement of unintentional delay.

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 $525.00 extension of time fee submitted with the petition on December 27, 2007 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 Kimberly Inabinet at (571) 272-4618.

This application is being referred to Technology Center AU 1642 for appropriate action by the Examiner in the normal course of business on the reply received December 27, 2007.

Andrea Smith
Petitions Examiner
Office of Petitions

7

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

PETER A. MCKENNA
SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
SUITE 800
WASHINGTON, DC 20037

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SEP 1 0 2002

OFFICE OF PETITIONS

In re
Dong-seek Park, John Villasenor, Feng Chen,
Max Luttrell and Brendan Dowling
Reissue Application No. 09/996,086
Filing Date: September 21, 2001
Reissue of Patent No. 5,954,839
Original Issue Date: September 21, 1999
Title: ERROR PREVENTION METHOD FOR MULTIMEDIA

DECISION ACCORDING STATUS UNDER §1.47(a)

This is in response to the petition under 37 CFR 1.47(a), filed July 19, 2002.

The petition is GRANTED.

The above-identified reissue application of patent No. 5,954,839 (Issued September 21, 1999) was filed on September 21, 2001, without an executed reissue declaration and without the written consent of assignee and statement under 37 CFR 3.73(b) [1]. Accordingly, on December 19, 2001, the Office mailed a "Notice to File Missing Parts of Reissue Application," requiring these items, along with the surcharge under § 1.16(e) for late filing. This Notice set a two-month period for reply, with extensions of time obtainable under § 1.136(a).

Applicant replied with the instant petition under § 1.47, made timely by an accompanying petition for a five-month extension of time (and fee); payment of the petition fee; an "assent of assignees to reissue and statement under 37 CFR 3.73(b)," and a reissue declaration executed by joint inventors Max Luttrell, Brendan Dowling and Dong-seek Park on behalf of themselves and on behalf of non-signing inventors John Villasenor and Feng Chen. Rule 47 applicants assert that status under § 1.47 is proper because inventors Villasenor and Chen cannot be reach or found, after diligent effort, to join in the application. In support of the petition, applicants submitted the declaration of patent attorney George H. Gates to establish the pertinent facts.

---

[1] 37 CFR 1.172 (a) provides that:

A reissue oath must be signed and sworn to or declaration made by the inventor or inventors except as otherwise provided (see §§1.42, 1.43, 1.47), and must be accompanied by the written consent of all assignees, if any, owning an undivided interest in the patent, but a reissue oath may be made and sworn to or declaration made by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent. All assignees consenting to the reissue must establish their ownership interest in the patent by filing in the reissue application a submission in accordance with the provisions of §3.73(b) of this chapter.

Attorney Gates declares that inventor Villasenor continues to work for assignee University of California. Thus, the reissue application was sent to inventor Villasenor at his Office E-mail three times, and its receipt was confirmed by inventor Villasenor's secretary. However, attorney Gates has not received a return copy of the reissue declaration from inventor Villasenor. As to inventor Chen, he no longer works for the assignee. Thus, the reissue application was sent to his last known address first by normal mail and subsequently by certified mail. Attorney Gates declares that the certified mail receipt was signed, albeit by a person other than inventor Chen. Attorney Gates has also not received a return copy of the reissue declaration from inventor Chen.

This evidence has been considered and it is concluded that rule 47 applicant has shown that the non-signing inventors are unavailable to join in the application. The evidence supports a conclusion that they either cannot be reached, after diligent effort, or by their conduct, refuse to sign the oath or declaration after having been presented with the application papers. The petition includes a statement of the last known addresses of both non-signing inventors.

The reissue declaration filed July 19, 2002, and the petition have been reviewed and found in compliance with 37 C.F.R. §1.47(a).

This application is hereby accorded Rule 1.47(a) status.

As provided in new Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

The application file is being returned to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0309.

Nancy Johnson
Petitions Attorney
Office of Petitions
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 D. VILLASENOR
828 11th STREET, A7
SANTA MONICA, CA 90405

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SEP 1 0 2002

OFFICE OF PETITIONS

In re Dong-seek Park, John Villasenor, Feng Chen, Max Luttrell and Brendan Dowling Reissue Application No. 09/996,086 Filing Date: September 21, 2001 Reissue of Patent No. 5,954,839 Original Issue Date: September 21, 1999 Title: ERROR PREVENTION METHOD FOR MULTIMEDIA	:	LETTER

Dear Mr. Villasenor:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

PETER A. MCKENNA
SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
SUITE 800
WASHINGTON, DC 20037

UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov

FENG CHEN
16251 LAGUNA CANYON ROAD
IRVINE, CA 92618

In re
Dong-seek Park, John Villasenor, Feng Chen,
Max Luttrell and Brendan Dowling
Reissue Application No. 09/996,086
Filing Date: September 21, 2001
Reissue of Patent No. 5,954,839
Original Issue Date: September 21, 1999
Title: ERROR PREVENTION METHOD FOR MULTIMEDIA

LETTER

COPY MAILED
SEP 1 0 2002
OFFICE OF PETITIONS

Dear Mr. Chen:

You are named as a joint inventor in the above-identified United States patent application filed under the provisions of 35 U.S.C. 116 (United States Code) and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will be designated therein as a joint inventor.

As a named inventor you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Nancy Johnson at (703) 305-0309. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-2733. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to the Certification Division at (703) 308-9726 or 1-800-972-6382 (outside the Washington D.C. area).

Nancy Johnson
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

PETER A. MCKENNA
SUGHRUE MION ZINN MACPEAK & SEAS
2100 PENNSYLVANIA AVENUE NW
SUITE 800
WASHINGTON, DC 20037

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JUL 23 2008

LOUIS PAUL HERZBERG
3 CLOVERDALE LANE
MONSEY NY 10952

In re Application of	:	
Draper et al.	:	
Application No. 09/996, 087	:	DECISION ON PETITION
Filed: November 28, 2001	:	
Attorney Docket No. FR920000043US1	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed June 29, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Non-Final Rejection mailed, September 25, 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 December 26, 2006.

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 After Non-Final, (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.

Telephone inquiries concerning this decision should be directed to Denise Williams at (571) 272-8930.

This application is being referred to Technology Center AU 2155 for appropriate action by the Examiner in the normal course of business on the reply received.

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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AUG 03 2009

OFFICE OF PETITIONS

IBM CORPORATION,
T.J. WATSONRESEARCH CENTER
P.O. BOX 218
YORKTOWN HEIGHTS NY 10598

In re Application of

Draper, et al.

Application No. 09/996,087

Filed: November 28, 2001

Attorney Docket No. **FR20000043US1**

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), July 1, 2009, to revive the above-identified application.

The petition is **granted**.

This application became abandoned for failure to timely remit the issue fee and publication fee as required by the Notice of Allowance and Issue Fee Due (the "Notice") mailed August 1, 2008. The Notice set forth a three (3) month statutory period for reply. The fees were not received within the allowable period. Accordingly, this application became abandoned on November 2, 2008. A Notice of Abandonment was mailed November 24, 2008.

The fees were received on July 1, 2009.

Form PTOL-85B, filed July 1, 2009, is noted and made of record.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the instant petition was ever given a power of attorney or authorization of agent to prosecute the above-identified application. If the person signing the instant

petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. While a courtesy copy of this decision is being mailed to the person signing the instant petition, all future correspondence will be directed to the address of currently of record until such time as appropriate instructions are received to the contrary.

The application is being directed to the Office of Data Management for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

cc:
Michael J. Buchenhomer
8540 SW 83rd Street
Miami, FL 33143

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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IBM CORPORATION, T.J. WATSON RESEARCH CENTER
P.O. BOX 218
YORKTOWN HEIGHTS, NY 10598

Mail Date: 04/20/2010

Applicant	: Dave Draper	: DECISION ON REQUEST FOR
Patent Number	: 7590689	: RECALCULATION of PATENT
Issue Date	: 09/15/2009	: TERM ADJUSTMENT IN VIEW
Appliction No	: 09/996,087	: OF WYETH AND NOTICE OF INTENT TO
Filed	: 11/28/2001	: ISSUE CERTIFICATE OF CORRECTION
		:

The Request for Recalculation is **GRANTED** to the extent indicated.

The patent term adjustment has been determined to be **691** 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. 4

Wolf Greenfield & Sacks
600 Atlantic Avenue
Boston, MA 02210

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JAN 1 5 2003

OFFICE OF PETITIONS

In re Application of :
Berenson et al. :
Application No. 09/996,089 : ON PETITION
Filed: November 27, 2001 :
Attorney Docket No. T00485.70005.US :

This is a decision on the petition under 37 CFR 1.137(b), filed December 2, 2002, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Application (Notice) mailed December 19, 2001. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on February 20, 2002.

Telephone inquiries concerning this decision should be directed to Latrice Bond at (703) 308-6911.

The application file is being forwarded to the Office of Initial Patent Examination for further processing.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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FEB - 1 2006

FISH & RICHARDSON P.C.
P.O. BOX 1022
MINNEAPOLIS, MN 55440-1022

In re application of Kenneth A. Hill Sr. et al. Application No. 09/996,100 Filed: November 26, 2001 For: AUTOMATED SYSTEM AND METHOD FOR PROCESSING PRESCRIPTIONS	: : : :	**DECISION ON PETITION TO MAKE SPECIAL (INFRINGEMENT)**

This is a decision on the petition under 37 C.F.R § 1.102(d) filed November 30, 2005 to make the above-identified application special.

The petition requests that the above-identified application be made special under the procedure set forth in M.P.E.P. § 708.02, item II: Infringement.

MPEP 708.02 states that a Petition to Make Special based on Infringement must have the following: (1) the appropriate petition fee under 37 CFR 1.17(i); (2) a statement by the assignee, applicant, or attorney alleging: (A) that there is an infringing device or product actually on the market or method in use; (B) that a rigid comparison of the alleged infringing device, product or method with the claims of the application has been made, and that, in his or her opinion, some of the claims are unquestionably infringed; and (C) that he or she has made a careful and thorough search of the prior art, or has good knowledge of the prior art, and has sent a copy of the references deemed most closely related to the subject matter encompassed by the claims.

The petition filed November 30, 2005 meets all of the requirements above and, therefore, the petition is **GRANTED**.

With regards to element 2(C) above, an Information Disclosure Statement was filed on May 05, 2004.

The examiner is directed (1) to make an interference search for possible interfering applications; (2) to promptly examine this application out of turn; and (3) if any interfering application is discovered, to examine such application simultaneously and state in the first official letter of such application that it is being taken out of turn because of a possible interference.

Petitioner is advised that this application will continue to be special, throughout its entire prosecution and pendency, including interference and appeal, if any, only if petitioner makes a prompt *bona fide* effort, in response to each Office action, to place the application in condition for allowance, even if it is necessary to conduct an interview with the examiner to accomplish this purpose.

Kenneth J. Dorner
Special Programs Examiner
Technology Center 3600
(571) 272-6587

KJD/slb: 01/17/06

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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MAY 10 2007

OPPEDAHL AND LARSON LLP
PO BOX 5068
DILLON, CO 80435-5068

In re Application of	:
Alan N. Houghton et al.	:
Serial No.: 09/996,128	: PETITION DECISION
Filed: November 27, 2001	:
Attorney Docket No.: MSK.P-026-3	:

This letter is in response to the petition under 37 CFR 1.144, filed February 27, 2007, requesting review and modification of the restriction requirement. The delay in acting upon this petition is regretted.

BACKGROUND

A review of the file history shows that this application was filed on November 27, 2001, under 35 U.S.C. 111(a). The examiner mailed to applicants on June 25, 2004, a restriction requirement, wherein six distinct inventions (Groups I-VI) were identified and rationale set forth establishing the examiner's position.

Group I, drawn to a method for treating melanoma by administering human tyrosinase.
Group II, drawn to a method for treating melanoma by administering human gp75.
Group III, drawn to a method for treating melanoma by administering mouse tyrosinase.
Group IV, drawn to a method for treating melanoma by administering mouse gp75.
Group V, drawn to a vector comprising SEQ ID No 1.
Group VI, drawn to a vector comprising SEQ ID No 2.

Applicants' replied on July 26, 2004, electing Group I, with traverse. Applicants argued that election should be treated as an election of human tyrosinase as a species and that the claims of Groups II, III and IV should be recombined.

The examiner mailed a new Office action on November 3, 2004, acknowledging the election of Group I and the traversal. The examiner maintained the requirement and made it Final on the basis that the differentiation antigens are patentably distinct and structurally different from one another and would elicit different immune responses. Claims 3, 6-9, 13-16, 18 and 25-27 were withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Claims 1, 2, 4, 5, 10, 11 and 19-23 were rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Claims 1, 2, 4, 5, 10-12 and 19-23 were rejected under 35 U.S.C. 103(a) as being unpatentable over Disis et al. in

view of Naftzger et al. Claims 1, 2, 4, 5, 10-12, 17 and 19-24 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 10/041,410.

On February 3, 2005, applicants responded with arguments addressing all outstanding rejections of record appropriately.

On May 6, 2005, the examiner mailed to applicants a second Non-Final Office action. The rejection of claims 1, 2, 4, 5, 10, 11 and 19-23 under 35 U.S.C. 112, first paragraph, was withdrawn in view of applicants' arguments. The rejection of claims 1, 2, 4, 5, 10-12 and 19-23 under 35 U.S.C. 103(a) as being unpatentable over Disis et al. in view of Naftzger et al. was withdrawn in view of applicants' arguments. Claims 1, 4, 10, 11, 19, 20 and 23 were rejected under 35 U.S.C. 112, first paragraph, for lack of enablement. The provisional rejection of claims 1, 2, 4, 5, 10-12 and 19-23 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 10/041,410 was maintained. Claims 17 and 24 were objected to as being dependent upon a rejected base claim.

Applicants filed a response on August 7, 2005, adding claims 28-29 and appropriately responding to the rejections/objections of record.

On November 1, 2005, the examiner mailed to applicants a third Non-Final Office action. Upon reconsideration, the examiner rejoined Group II (claims 1, 3, 4, 6, 10, 11, 13, 19, 20, 23 and 24, to the extent the claims read upon human gp75) with the elected Group I. Claims 3, 7-9, 14-16 and 25-27 were withdrawn from consideration as being drawn to a non-elected invention. Claims 28 and 29 were objected to for referring to non-elected subject matter. Claims 1-6, 10, 11, 19, 20, 21, 23, 28 and 29 were rejected under 35 U.S.C. 112, first paragraph, for lack of enablement. Claims 1, 4, 10 and 11 were rejected under 35 U.S.C. 102(a) as being anticipated by Zhai et al. Claims 1-6, 10-13 and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Zhai et al. in view of US 5,773,291. The provisional rejection of claims 1, 2, 4, 5, 10-12, 17 and 19-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 10/041,410 was maintained.

Applicants filed a response on May 1, 2006, canceling claims 1-19 and 28; adding claim 30; and appropriately addressing the rejections of record.

On July 18, 2006, the examiner mailed to applicants a fourth Non-Final Office action. The objection to claim 28 was withdrawn. The rejection of claims 20, 21, 23 and 29 under 35 U.S.C. 112, first paragraph, for lack of enablement was withdrawn. The rejection of claims 1, 4, 10 and 11 under 35 U.S.C. 102(a) as being anticipated by Zhai et al. was withdrawn. The provisional rejection of claims 20-24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 10/041,410 was withdrawn. Claims 20-23 and 29-30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Zhai et al. in view of US 5,773,291 and US 6,080,727.

Applicants filed a response on October 18, 2006, amending claim 24 and appropriately addressing the rejections of record.

On December 27, 2006, the examiner mailed to applicants a Final Office action. Claims 25-27 were withdrawn from consideration as being drawn to a non-elected invention. The rejection of claims 20-23, 29 and 30 under 35 U.S.C. 103(a) as being unpatentable over Zhai et al. in view of US 5,773,291 and US 6,080,727 was maintained. Claim 24 was allowed.

Applicants filed a response to Final Office action February 27, 2007, along with this petition. The examiner has not yet responded to the amendment after Final Office action pending this petition decision.

DISCUSSION

The petition and filed history have been carefully considered.

Applicants argue that (1) MPEP 803.04 indicates that election of up to ten species of oligonucleotide per application is reasonable even in the context of a composition claim, in accordance with the partial waiver of the single invention provisions of 37 CFR 1.141. Applicants also argue that (2) the examiner has not shown a search burden. As third point to be considered, the application contains linking claim, which, if allowable, would result in withdrawal of the restriction requirement between the linked inventions.

1. Consideration of MPEP 803.04 in view of the March 27, 2007 OG Notice.

The petition asserts that the examination is inconsistent with Manual of Patent Examining Procedure (MPEP) 803.04. The petition states that the restriction improperly limited election to only one nucleotide sequence, instead of 10 nucleotide sequences and limited examination to only the one elected sequence together with only two patentably indistinct sequences instead of all antisense oligonucleotides corresponding to a single gene encoding a single protein. The petition cites MPEP 803.04 directed to the 1996 OG Notice, which granted a partial waiver for independent and distinct inventions. This argument has been reviewed but is not convincing.

An OG Notice published March 27, 2007 rescinded the 1996 OG Notice that provided for a partial waiver of the requirements for restriction practice by permitting examination of a reasonable number, up to ten, independent and distinct polynucleotide molecules in a single 35 USC 111(a) or 35 USC 371 application. The Notice indicated that the standard of independence and distinctness would be applied to polynucleotide claims filed in an application under 35 USC 111(a).

2. Consideration of Burden

Additionally, the March 27, 2007 OG Notice specifically spoke to the issue of burden of searching more than one independent and distinct invention. The instantly claimed embodiments have a different field of search and require different database queries. The advances in nucleic acid sequencing techniques have lead to the exponential growth in the size of nucleic acid sequence databases and an increase in the number and complexity of such databases. These factors exacerbate the search and examination burden faced by the office with respect to

polynucleotide inventions claimed and described in currently filed applications. Due to the vast number of sequences presently listed in the database, search and examination of multiple combinations nucleotide sequences causes an undue burden upon the examiner and the Office.

2. Consideration of Linking Claims

MPEP 809 provides direction for linking claims. MPEP 809 specifically states "[l]inking claims and the inventions they link together are usually either all directed to products or all directed to processes (i.e., a product claim linking properly divisible product inventions, or a process claim linking properly divisible process inventions)."

Claim 20 is a linking claim because it is not specific for any particular xenographic differentiation antigen. The Xenographic differentiation antigen may be human or mouse tyrosinase or human or mouse gp75.

20. (original) A method for treating canine malignant melanoma in a dog suffering from canine malignant melanoma comprising administering to the dog an immunologically-effective amount of a xenogeneic differentiation antigen of the same type as a differentiation antigen expressed by melanoma cells of the dog.

In this application, the examiner has properly treated the linking claim 20. The generic linking claim has been examined on its merits and is currently rejected under 35 USC 103(a). At this point, the linking claim is not in condition for allowance. Any request for rejoinder among linked species or linked inventions would be premature until all claims directed to the elected invention, including all linking claims are in condition for allowance.

The MPEP further provides that

> "Upon the indication of allowability of the linking claim(s), the restriction requirement as to the linked inventions **shall** be withdrawn and any claim(s) depending from or otherwise requiring all the limitations of the allowable linking claim(s) will be rejoined and fully examined for patentability in accordance with 37 CFR 1.104 **Claims that require all the limitations of an allowable linking claim** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.
>
> Applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, the allowable linking claim, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

DECISION

The petition is **GRANTED-IN-PART**.

The petition is **GRANTED** to the extent that Claim 20, as currently drafted, will continue to be treated as a linking claim. The examiner will continue to examine the linking claims on the merits as long as claim 20 encompasses the elected invention. In the event that all the generic claims directed to the elected invention become allowable, the examiner will reconsider rejoinder of claims which depend from or otherwise all the limitations of allowable claims, including any directed to non-elected sequences.

The request to withdraw the restriction requirement made between the method administering a vector having SEQ ID No 1 (which encodes human tyrosinase, as encompassed by claims 20-24, 29 and 30) and SEQ ID NO 2 (which encodes mouse tyrosinase set forth in claim 25) is **DENIED** as premature, in view of the unpatentability of linking claim 20.

The restriction requirement Group I and II was withdrawn by the examiner in the Office action mailed 1 November 2005. The method of administering human tyrosinase and method of administering human gp75 are currently under examination.

The restriction requirement set forth between the method of administering human or mouse tyrosinase (Groups I and III) and the product of a vector encoding human or mouse tyrosinase (Groups V and VI) is maintained.

Applicants remain under obligation to respond to the FINAL Office action mailed 27 December 2006 or to take other appropriate action within the time period set forth in that FINAL Office action.

Any request for reconsideration of this decision must be filed within two (2) months of the mailing date of this decision.

The application will be forwarded to the examiner for further action consistent with this decision and for consideration of applicants' response filed 27 February 2007 along with this petition.

Should there be any questions about this decision, please contact Quality Assurance Specialist/Program Manager Julie Burke, by letter addressed to Director, Technology Center 1600, at the address listed above, or by telephone at 571-272-1600 or by facsimile sent to the general Office facsimile number, 571-273-8300.

John LeGuyader
Director, Technology Center 1600

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: _____

DATE : October 4, 2005

TO SPE OF : ART UNIT 2821

SUBJECT : Request for Certificate of Correction on Patent No.: 6,901,101 /09/996143

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:

_____

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SPE

2821
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. 4

Dara L. Onofrio
233 Broadway - Suite 2702
New York, NY 10279

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APR 0 2 2002

OFFICE OF PETITIONS

In re Application of
Chotkowsky et al.
Application No. 09/996,198
Filed: November 6, 2001
For: Wireless Device for Broadcast of Information and Related Method for use with Mobile Wireless Devices

: DECISION GRANTING
: PETITION

This is a decision on the petition under 37 CFR 1.10(d) filed January 24, 2002, requesting that the above-identified application be accorded a filing date of November 6, 2001, rather than the presently accorded filing date of November 27, 2001.

Applicant requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on November 6, 2001, pursuant to the requirements of 37 CFR 1.10. In support of the showing that the application is entitled to a filing date of November 6, 2001, petitioner has submitted a copy of an "Express Mail" tracking record bearing "Express Mail" label no. EL768468484US and indicating that the correspondence was accepted in the United States Postal Service on November 6, 2001. However, the date listed in the "date-in" box appearing in the copy of the "Express Mail" label located within the application filewrapper is either omitted or illegible.

The rule specifically requires that the "date-in" must state the date of actual deposit. Placing the "Date-In" on the "Express Mail" label by the postal clerk establishes that the package was actually received by the Postal Service. That is the date that verifies that the package was actually mailed. Therefore, since the full date of deposit is either missing or illegible in the "date-in" box on the Express Mail label, the copy of the Express Mail label cannot be accepted as evidence in support of the petition. However, the USPS tracking record submitted with the petition shows that the correspondence was deposited with the U.S. Postal Service as Express Mail on November 6, 2001 at 5:03 pm.

In view of the above, the petition meets the requirements of rule 37 CFR 1.10.

The petition is **granted**.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of November 6, 2001.

Telephone inquiries concerning this matter may be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

attachment: Corrected Filing Receipt